

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN NEIL RENNELLS,

No. 38104

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,¹ of lewdness with a child under the age of 14 years. The district court sentenced appellant Edwin Neil Rennells to serve a term of 24 to 120 months in prison. The district court further imposed a special sentence of lifetime supervision upon completion of any term of parole.

Rennells' sole contention is that the district court abused its discretion by denying his presentence motion to withdraw his plea. We conclude that this contention lacks merit.

Rennells sought to withdraw his plea because the district court failed to canvass him regarding his reasons for entering a nolo contendere plea when he continued to maintain his innocence. Rennells also suggested that he did not fully understand the potential sentence, that he was promised a particular sentence by his counsel, and that he did not sufficiently understand the role of the Division of Parole and Probation in sentencing. Rennells argued that portions of the plea canvass regarding these issues demonstrate that, although he told the district court that he had reviewed the written plea agreement, he did not truly understand all of its terms or counsel failed to explain all of its terms. Rennells makes the same arguments on appeal.

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

NRS 176.165 permits a defendant to file a motion to withdraw a plea prior to sentencing. The district court may grant such a motion in its discretion for any substantial reason and if it is fair and just.² On a motion to withdraw a plea, the defendant has the burden of showing that his plea was not entered knowingly, intelligently, and voluntarily.³ To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.⁴ "On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"⁵ Based on our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying the motion.

We conclude that the district court's failure to expressly reconcile the conflict between Rennells' waiver of his right to trial and his claim of innocence does not alone render the plea invalid. Rennells is correct that when accepting an Alford plea, the trial court should inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.⁶ However, the purpose behind requiring inquiry into the reason for the plea is to "protect[] the innocent and . . . insur[e] that guilty pleas are a product of free and intelligent choice."⁷ We have always looked to the totality of the circumstances in evaluating the validity of a guilty plea.⁸ The totality of the circumstances in this case demonstrates that Rennells entered a knowing and voluntary plea. Contrary to Rennells' assertions, the record demonstrates that he understood the

²State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁴See id. at 271, 721 P.2d at 367; see also Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993).

⁵Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

⁶See Alford, 400 U.S. at 38 n.10; Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

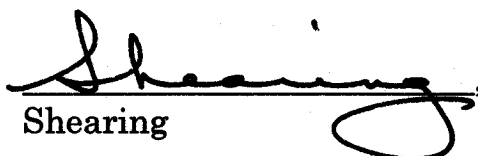
⁷Alford, 400 U.S. at 38 n.10.

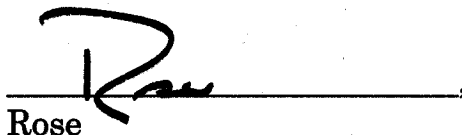
⁸See Bryant, 102 Nev. 268, 721 P.2d 264.

consequences of his plea, including the potential sentence; that the matter of sentencing was entirely within the district court's discretion; and that Rennells reviewed and signed the written plea agreement. Moreover, the written plea agreement states that Rennells determined that it was in his "best interest" to enter the plea and that going to trial was not in his "best interest." The foundation for this statement is clear from the totality of the circumstances: Rennells sought to avoid a trial and potential convictions on the original charges, which would have resulted in a more severe sentence. We therefore conclude that the district court did not abuse its discretion in denying the presentence motion to withdraw the plea.

Having considered Rennells' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk