

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE CRISTOBAL SANTIBANEZ-
GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38252

FILED

MAY 30 2002

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw a guilty plea.

On April 28, 1998, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve a maximum term of twenty-five years with a minimum parole eligibility of ten years in the Nevada State Prison. Appellant received credit for seventy-five days time served. This court dismissed appellant's direct appeal.¹

On September 28, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent appellant and counsel filed a supplement. On December 14, 2000, the district court conducted an evidentiary hearing. On December

¹Santibanez-Garcia v. State, Docket No. 32376 (Order Dismissing Appeal, August 12, 1998).

28, 2000, the district court denied appellant's petition. This court affirmed the order of the district court.²

On July 2, 2001, appellant filed a proper person motion to withdraw a guilty plea in the district court. On July 11, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that (1) the plea bargain was invalid because it was based upon counsel's erroneous assumption that the co-defendant was a minor, and that the enhancement under NRS 193.162 could therefore be applied to appellant, and (2) the district court was unaware of the co-defendant's true age and the judge sentenced appellant more harshly "under the assumption that [appellant] had induced a minor to sell large amounts of drugs."

A guilty plea is presumed valid, and the defendant has the burden of establishing that the plea was not entered knowingly and intelligently.³ A trial court may properly accept a guilty plea "if the trial court sufficiently canvassed the defendant to determine whether the defendant knowingly and intelligently entered into the plea."⁴ A defendant's mere subjective belief as to a potential sentence is insufficient to invalidate the guilty plea as involuntary and unknowing.⁵

²Santibanez-Garcia v. State, Docket No. 37364 (Order of Affirmance, May 18, 2001).

³Paine v. State, 110 Nev. 609, 619, 877 P.2d 1025, 1031 (1994) (citing Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

⁴Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990) (citing Williams v. State, 103 Nev. 227, 230, 737 P.2d 508, 510 (1987)).

⁵Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

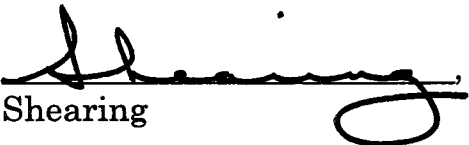
Based upon our review of the record on appeal, we conclude that appellant's claims lack merit. The issue of the co-defendant's true age and how it affected the plea process was substantially raised in appellant's timely habeas corpus petition and addressed by this court, and is therefore barred by the doctrine of law of the case.⁶ In his timely habeas corpus petition, appellant argued, among other things, that his trial counsel was ineffective for failing to investigate and inform the court and the district attorney that the co-defendant was not a juvenile. Appellant further argued in his petition that this rendered his guilty plea involuntary and unknowing. The district court, after hearing testimony presented at the evidentiary hearing, denied this claim. This court, in affirming the order of the district court, concluded that counsel was not ineffective with regard to investigating information about appellant's co-defendant, and that under the totality of the circumstances the plea process was not defective because appellant's plea was entered voluntarily and knowingly. Appellant may not avoid the doctrine of the law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁷ Further, the record revealed nothing indicating that the sentencing judge assumed appellant had induced a minor to sell large amounts of drugs. Therefore, we conclude that the district court did not err in denying appellant's motion to withdraw his guilty plea.

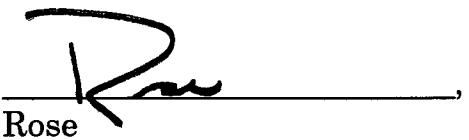
⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

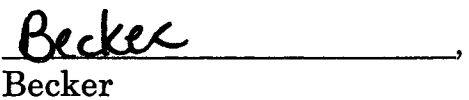
⁷See id. at 316, 535 P.2d at 799.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Jose Cristobal Santibanez-Garcia
Washoe District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).