

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD J. KRAVETZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38714

FILED

FEB 11 2002

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Richard J. Kravetz's motion to withdraw his guilty plea.

On March 10, 2000, Kravetz was convicted, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon. The district court sentenced Kravetz to serve a prison term of 48-120 months; the sentence was ordered to run concurrently with the sentence in another case (district court case no. C158600). Kravetz did not file a direct appeal.

On March 22, 2001, Kravetz filed a motion to withdraw his guilty plea in the district court. The State opposed the motion. On June 13, 2001, after a hearing in the district court, Kravetz's motion was denied. On September 21, 2001, Kravetz filed a second motion to withdraw his guilty plea in the district court; on October 9, 2001, the district court denied the motion. Kravetz now appeals from the denial of his second motion to withdraw his guilty plea.

Initially, we note that although Kravetz challenges the district court's denial of the claims raised in his motion, he has failed to provide a satisfactory record for our review. More specifically, Kravetz has failed to include in his appendix in this appeal a copy of the second motion to withdraw his guilty plea filed in the district court, and the written guilty

plea agreement. Therefore, we must rely on the transcript of his arraignment and plea canvass, and the brief transcript of the hearing on the second motion in the district court. Kravetz has also failed to include in his appendix the supplemental memoranda filed in the district court pertaining to the first motion to withdraw his guilty plea, as well as the transcript of the hearing on the first motion, and a copy of the district court's written order denying his first motion. Kravetz has the burden of making a proper appellate record,¹ and his failure to do so precludes our review of any deficiently supported claim.² Nevertheless, although the fast track statement and appendix are deficient, they are adequate, in this case, to allow us to conduct a meaningful review.

Kravetz contends that his plea was involuntary and unknowing because (1) it was his understanding that "concurrent" meant "equal," and therefore it was his expectation that the sentence in this case would be the same as that imposed in district court case no. C158600 and

¹See NRAP 28(e) (requiring references in briefs to matters in the record be supported by citation to appendix or transcript and stating that briefs and memoranda filed in district courts shall not be incorporated by reference in appellate briefs); NRAP 30(b) (requiring inclusion in appellant's appendix of matters essential to the decision of issues presented on appeal); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant.").

²See Phillips v. State, 105 Nev. 631, 634, 782 P.2d 381, 383 (1989) (recognizing that appellant's failure to include in record on appeal evidence from trial court record relevant to issue raised constitutes a failure to preserve issue for appeal); cf. Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (recognizing that this court need not consider claim on appeal which appellant has not demonstrated was raised in petition denied by district court).

that he would not have to serve any additional time; and (2) his counsel was ineffective for not explaining the meaning of "concurrent," and for not adequately investigating the facts of the case. We disagree with Kravetz's contentions.

A guilty plea is presumptively valid, and the defendant has the burden of establishing that the plea was not entered knowingly and intelligently.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 Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁵ This court has stated that "[f]ollowing sentencing, a guilty plea may be set aside only to correct a manifest injustice."⁶

We conclude that Kravetz has not shown the occurrence of a manifest injustice, and that the district court did not err in denying his motion. Our review of the arraignment transcript reveals that Kravetz was thoroughly canvassed when he entered his guilty plea. The district court discussed with Kravetz the charge against him, the punishment range and possible fine, that his sentence would be determined only by the

³See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁴See Bryant at 271, 721 P.2d at 367; see also State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993).


⁵See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

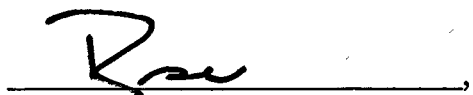
⁶Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990); see also NRS 176.165.

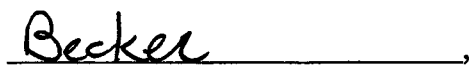
district court, and his constitutional rights and the loss of those rights resulting from his guilty plea. Kravetz stated that he thoroughly discussed with his attorney the charge against him, the elements of the offense that the State would need to prove if the case went to trial, and the possible defenses. Kravetz also confirmed that no promises or threats were made to induce him to plead guilty, and that he read, understood, and signed the formal guilty plea agreement. Further, Kravetz made a factual admission, stating that he struck the victim, his mother, with a two-by-four, which he knew was illegal. Based upon our review of the record, Kravetz did not establish that his counsel's allegedly ineffective representation induced his guilty plea, or that his plea was involuntarily or unknowingly entered.

Therefore, having considered Kravetz's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Neal & Small
Clark County Clerk