IN THE SUPREME COURT OF THE STATE OF NEVADA

ENDREL DECODE POPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38718

FILED

JUL 16 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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 March 24, 1997, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 172 months to 768 months in the Nevada State Prison. The district court also ordered appellant to pay restitution in the amount of $274,020.06. No direct appeal was taken.

On February 2, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 8, 1998, the district court denied appellant's petition. This court affirmed the order of the district court.[1]

[1]Pope v. State, Docket No. 32271 (Order of Affirmance, May 30, 2001).

02-12138

On September 18, 2001, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On October 8, 2001, the district court denied the motion. This appeal followed.

A guilty plea is presumptively valid, and the defendant has the burden of establishing that the plea was not entered knowingly and intelligently.[2] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[3] Based upon our review of the record on appeal, we conclude that appellant failed to meet his burden of demonstrating that his plea was not entered knowingly and intelligently.

First, appellant claimed that his plea was invalid due to the fact that he was improperly advised to plead guilty to two counts of attempted murder because the crime of attempted murder does not exist in Nevada. Appellant did not receive improper advice in the instant case. The crime of attempted murder does exist in Nevada.[4] Therefore, we conclude that appellant failed to demonstrate his plea was invalid in this regard.

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

[3]Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

[4]See Keys v. State, 104 Nev. 736, 766 P.2d 270 (1988) (defining attempted murder to be the performance of an act which tends, but fails, to kill a human being, when the act is done with express malice).

Second, appellant claimed that he was induced, coerced, deceived and tricked into pleading guilty by his attorney because his attorney informed him that he would receive concurrent sentences. This court considered and rejected the substantive underlying issue in the appeal from the denial of appellant's habeas corpus petition. The doctrine of the law of the case prevents further relitigation of this issue.[5] Appellant was adequately informed of the potential penalties he faced by entry of his guilty plea, including the fact that the sentences could be imposed to run consecutively. Therefore, appellant failed to demonstrate that his plea was invalid in this regard.

Third, appellant claimed that he was not adequately canvassed about the nature of the charges. Appellant's claim is belied by the record on appeal.[6] The district court elicited factual admissions from appellant for the attempted murder offenses. The guilty plea agreement further informed appellant of the elements of attempted murder with the use of a deadly weapon. Therefore, appellant failed to demonstrate that his plea was invalid in this regard.

Fourth, appellant claimed that his plea was invalid because he was not advised that he would have to pay restitution and he was not advised of the amount of restitution. Appellant was adequately informed of the possibility of restitution; the written guilty plea agreement informed

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[5]Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[6]Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

appellant that if appropriate he would be ordered to pay restitution.[7] Appellant was not required to be informed of the specific amount of restitution upon entry of the plea. The presentence report did set forth the specific amount of restitution. Appellant did not object to the restitution amount during the sentencing hearing. Therefore, appellant failed to demonstrate that his plea was invalid in this regard.[8]

Fifth, appellant claimed that the district court breached the plea agreement when it accepted the plea agreement because appellant subjectively believed that he would receive a particular sentence and the district court imposed a different sentence. Appellant claimed that it created confusion for the district court to accept the plea agreement on one hand and on the other hand state that it was not bound by the terms of the plea agreement. Appellant's claim is patently without merit.[9] The district court, by the very terms of his plea agreement, was not bound to impose the sentence appellant subjectively believed that he would receive as a result of the plea negotiations. Therefore, appellant failed to demonstrate that his plea was invalid in this regard.

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[7]See Lee v. State, 115 Nev. 207, 985 P.2d 164 (1999).

[8]To the extent that appellant challenged the amount of restitution, appellant's claim fell outside the scope of a motion to withdraw a guilty plea because it did not challenge the validity of the plea.

[9]See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (holding that "mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.").

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Maupin

_____, J.
Shearing

_____, J.
Rose

cc: Hon. Michael A. Cherry, District Judge
Attorney General/Carson City
Clark County District Attorney
Endrel Decode Pope
Clark County Clerk

[10]Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).