IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE EMPY, A/K/A THEODORE LUIS EMPEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38993

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Theodore Empy's post-conviction motion to withdraw a guilty plea.

On November 9, 2000, the district court convicted Empy, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of fourteen years and one count of attempted sexual assault. The district court sentenced Empy to serve two concurrent terms of 24 to 60 months in the Nevada State Prison. Empy did not file a direct appeal.

On August 24, 2001, Empy filed a post-sentencing motion to withdraw in part his guilty plea in the district court.[1] The State opposed the motion, arguing that Empy did not meet his burden of establishing that his plea was not entered knowingly and intelligently.[2] The district

[1]Empy's motion to withdraw his guilty plea pertained only to his attempted sexual assault conviction, not to the attempted lewdness conviction.

[2]See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (plea of guilty must be viewed as presumptively valid, and defendant has burden to establish plea was not entered knowingly and intelligently).

court held an evidentiary hearing and denied Empy's motion. This appeal followed.

Empy contends that the district court erred in denying his motion to withdraw his plea because Empy presented evidence that the minor victim of the alleged sexual assault attempt may have recanted her statement to police that Empy had licked her vagina. Empy argues that, despite his factual admission on the record that he attempted to sexually assault the girl, her alleged recantation means that he did not commit the crime and his guilty plea is invalid.

A guilty plea is presumptively valid, especially when entered, as here, on advice of counsel.[3] This court will not disturb the district court's denial of a motion to withdraw a guilty plea in the absence of a "clear showing of an abuse of discretion."[4] Moreover, the district court may only permit a defendant to withdraw a guilty plea after sentencing to "correct manifest injustice."[5]

The record on appeal shows that the victim told the police about other acts allegedly performed by appellant, aside from licking her vagina, that were not recanted and that could independently constitute the crime of attempted sexual assault upon this particular girl. The record also reveals that several counts of sexual offenses committed against this victim and four other minor girls were dismissed in exchange for Empy's guilty plea in this case. Empy obtained a substantial benefit

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[3]Wingfield v. State, 91 Nev. 336, 535 P.2d 1295 (1975).

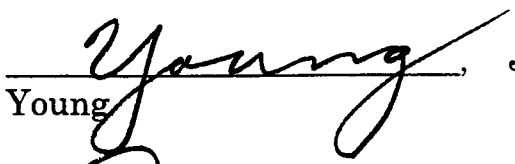
[4]Bryant, 102 Nev. at 272, 721 P.2d at 368.

[5]NRS 176.165; State v. Adams, 94 Nev. 503, 505-06, 581 P.2d 868, 869 (1978).

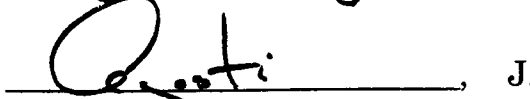
by pleading guilty to these two counts.[6] We conclude that manifest injustice did not occur in this case and that the district court did not abuse its discretion by denying Empy's motion.

Having considered Empy's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Young



_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Michael A. Cherry, District Judge
Attorney General/Carson City
Clark County District Attorney
Kirk T. Kennedy
Clark County Clerk

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[6]Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984) (the question of an accused's guilt or innocence is generally not at issue in a motion to withdraw a guilty plea when accused pleads guilty to avoid punishment on other charges) (citing Kercheval v. United States, 274 U.S. 220, 224 (1927)).