

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE E. SCHWIGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39007

FILE

AUG 24 2004

ORDER OF AFFIRMANCE

JANET L. WOOD  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to an Alford plea,<sup>1</sup> of one count of lewdness with a child under the age of 14 and two counts of solicitation to commit murder. The district court sentenced appellant Lawrence Schwiger to serve a prison term of life for the count of lewdness and prison terms of 72 to 180 months for each count of solicitation to commit murder. The terms for solicitation of murder were concurrent to one another and consecutive to the term for lewdness. Schwiger asks this court to vacate his guilty plea, allow him to testify before a new grand jury regarding his solicitation of murder charges, and order separate trials for the lewdness charge and the solicitation of murder charges. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On March 28, 2001, Schwiger was arraigned on an information charging him with four counts of lewdness with a child under

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

the age of 14 and two counts of sexual assault of a child under the age of 14. On April 26, 2001, Schwiger was arraigned on an indictment charging him with five counts of solicitation to commit murder. On May 13, 2001, the district court granted the State's motion for joinder of the two cases. On July 19, 2001, the district court held an evidentiary hearing on Schwiger's motion to dismiss the indictment or, in the alternative, to suppress evidence. In his motion, Schwiger claimed that the State improperly induced his solicitations to commit murder. The district court dismissed the motion without prejudice after all but one of Schwiger's witnesses failed to appear.

Immediately thereafter, Schwiger entered into plea negotiations with the State in which he agreed to plead guilty to one count of lewdness with a child under the age of 14 and two counts of solicitation to commit murder. On July 20, 2001, the district court conducted a plea canvass and accepted Schwiger's guilty plea. However, prior to sentencing, Schwiger filed a motion to withdraw his guilty plea. The district court conducted a hearing on the motion and heard testimony which contradicted Schwiger's claim that the State improperly induced him to solicit to commit murder. The district court dismissed Schwiger's motion and passed sentence. On December 11, 2001, the district court entered a formal judgment of conviction. This appeal followed.

Schwiger claims that the district court erred in denying his presentence motion to withdraw his guilty plea. Schwiger argues that the district court failed to conduct an adequate canvass, he did not understand

the written plea agreement, he was suffering "extreme frustration," and the district court coerced his plea.

"A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason' if it is 'fair and just.'"<sup>2</sup> In considering whether a defendant has "advanced a substantial, fair, and just reason to withdraw a [guilty] plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."<sup>3</sup> The district court "has a duty to review the entire record to determine whether the plea was valid . . . . [and] may not simply review the plea canvass in a vacuum."<sup>4</sup> The plea cannot be the product of coercion.<sup>5</sup>

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.<sup>6</sup> In reviewing the district court's

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<sup>2</sup>Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

<sup>3</sup>Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

<sup>4</sup>Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993) (emphasis added); see also State v. Freese, 116 Nev. 1097, 1104-06, 13 P.3d 442, 447-48 (2000).

<sup>5</sup>Standley v. Warden, 115 Nev. 333, 336-37, 990 P.2d 783, 785 (1999).

<sup>6</sup>NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000).

determination, "we 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."<sup>7</sup> If the motion to withdraw is based on a claim that the guilty plea was not entered voluntarily, knowingly, and intelligently, the burden to substantiate the claim remains with the appellant.<sup>8</sup>

Based on our review of the record on appeal, we conclude that the district court correctly assessed the validity of Schwiger's plea. In the written plea agreement, Schwiger stated that he discussed with his attorneys and understood the consequences of his plea, the waiver of his rights, and the elements of the charges. Schwiger further stated that the plea agreement was in his best interest and that he signed it voluntarily.

During the district court's oral plea canvass, Schwiger's attorneys stated that they had discussed the plea agreement with Schwiger and that they advised him of all possible penalties. In response to the district court's questions, Schwiger acknowledged that he understood the English language, the charges in the amended information, and the plea negotiations and that he was pleading guilty pursuant to Alford to avoid a harsher punishment. Schwiger also acknowledged that he had thoroughly read the written plea agreement and that he understood it.

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<sup>7</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

<sup>8</sup>See id.

Schwiger contends that statements made by the district court during the July 19, 2001, evidentiary hearing, and its refusal to allow the defense an opportunity to formally oppose the joinder of the cases, amounted to coercion under the parameters established by Standley v. Warden.<sup>9</sup> We conclude that this contention is patently without merit. Nothing in the record suggests that Schwiger's will was overborne, that he was unable to weigh alternatives, or that the district court abdicated its duty as a "neutral arbiter of the criminal prosecution."<sup>10</sup>

Schwiger argues that the State improperly induced him to solicit to commit murder so that it might bolster its weaker lewdness and sexual assault case by consolidating the two cases. He contends that this argument advances a substantial, fair, and just reason for allowing him to withdraw his guilty plea. However, during the district court's hearing on his motion to withdraw his guilty plea, Schwiger's witnesses refuted his claims of improper State involvement. Therefore, based on the totality of the circumstances, we conclude that Schwiger's guilty plea agreement was entered voluntarily, knowingly, and intelligently.

Schwiger also claims that the district court erred when it joined two disparate cases, violated his 60-day right to trial and constitutional right to a speedy trial, failed to provide him with sufficient

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<sup>9</sup>115 Nev. 333, 920 P.2d 783.

<sup>10</sup>See id. at 336-37, 990 P.2d at 785 (quoting United States v. Bruce, 976 F.2d 552, 557 (9th Cir. 1992)); see also Stocks v. Warden, 86 Nev. 758, 761, 476 P.2d 469, 471 (1970).

notice of his right to testify before a grand jury, and refused to consider his request for self-representation. These claims involve events which preceded Schwiger's guilty plea.

Generally, the entry of a guilty plea waives any right to appeal from events which preceded that plea.<sup>11</sup> "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."<sup>12</sup> However, NRS 174.035(3) presents an exception to the rule. It allows a defendant pleading guilty to reserve in writing the right to appeal an adverse determination on a specified pretrial motion, provided he or she has the consent of the district court and the district attorney.

Here, Schwiger entered into an Alford plea after the district court ordered the joinder of the two cases and addressed Schwiger's right to testify before the grand jury. The record does not support Schwiger's claim that he requested and was denied self-representation. Schwiger's speedy trial rights were waived by the Alford plea. Moreover, Schwiger does not allege, and the record does not indicate, that he preserved the

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<sup>11</sup>See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).


<sup>12</sup>Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)); see also Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (pleas of nolo contendere generally waive constitutional claims based on events occurring before entry of the pleas).

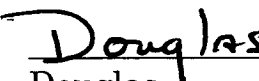
right to appeal any of these issues pursuant to NRS 174.035(3) prior to pleading guilty. Therefore, we conclude that these claims were waived when Schwiger entered his guilty plea.

Having concluded that Schwiger has failed to demonstrate that the district court erred in denying his presentence motion to withdraw his guilty plea and that his remaining claims were waived by the entry of his guilty plea, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge  
Amesbury & Schutt  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk