

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES BERNARD SANTOYA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39300

FILED

APR 21 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of sexual assault of a minor. The district court sentenced appellant James Bernard Santoya to serve a prison term of life with the possibility of parole after serving a minimum of twenty years.

Santoya contends that the district court erred in denying his presentence motion to withdraw his nolo contendere plea. Santoya argues that: (1) he was coerced by counsel into pleading; (2) the district court's consideration of his motion was cursory at best; and (3) without the appointment of replacement counsel, he was left without the assistance of counsel when arguing his motion.

"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.'"¹ To determine whether a defendant advanced a substantial, fair, and just reason to withdraw a guilty plea, the district

¹Woods 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.

court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.² 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.³ On appeal from the district court's 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.⁴ The burden is on the appellant to demonstrate that his guilty plea was not entered knowingly and intelligently.⁵

We conclude that Santoya has failed to demonstrate that the district court abused its discretion in denying his presentence motion to withdraw his nolo contendere plea or that his plea was not entered knowingly and intelligently. In making the motion to withdraw, Santoya informed the district court that he had not wanted to plead, but that he followed the advice of counsel.⁶ The district court considered Santoya's statement and the written plea memorandum, and reviewed the transcript

²See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

³NRS 177.045; Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984); see also Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000).

⁴See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

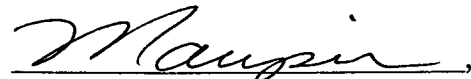
⁵See id.

⁶Santoya was originally charged with two counts of sexual assault of a child and one count of lewdness with a child under the age of fourteen years.


of the arraignment and plea canvass, reciting portions of the transcript in open court, and concluded that Santoya's nolo contendere plea was freely and voluntarily entered without threats, promises, or coercion and that Santoya's contention was belied by the record. We conclude the district court did not abuse its discretion and that Santoya is not entitled to the relief requested.

Having considered Santoya's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

ROSE, J., dissenting:

I would grant Santoya's motion to withdraw his nolo contendere plea or, at the very least, remand this matter for a full hearing to determine whether his counsel in fact coerced him to plead nolo contendere.

When a motion to withdraw a plea is made before sentencing, the district court should determine if the request is fair and just.¹ And, the district court is required to review all facts when deciding a presentence motion to withdraw a plea, not just conduct a review of the "plea canvass in a vacuum."² Here, the district court simply reviewed the plea canvass. Since Santoya was claiming that his appointed counsel had coerced him into pleading nolo contendere, Santoya's appointed counsel stated that he was put in a "precarious position" by these allegations and simply let Santoya make his request to withdraw his plea. Therefore, Santoya received no legal assistance in asserting his claim of coercion, and the district court did not even ask appointed counsel if he disputed Santoya's coercion allegations.


Before Santoya entered his plea, the district court told Santoya that the plea he was making may be the most important decision in his life. If in retrospect, Santoya believes that he made the wrong decision and his will was overborne by counsel, he should be able to withdraw his nolo contendere plea before sentencing. This would be a fair

¹See State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

²Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

and just result. At the very least, he is entitled to a hearing with special appointed counsel to assist him in presenting all the relevant facts concerning whether his plea was freely and voluntarily made and whether his reluctance to plead nolo contendere was overborne by his appointed counsel.

For these reasons, I respectfully dissent.


_____, J.
Rose