

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ROBERT BRAND, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39351

FILED

DEC 19 2002

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw a guilty plea.

On June 19, 2001, the district court convicted appellant, pursuant to a guilty plea, of second degree murder. The district court sentenced appellant to serve in the Nevada State Prison a term of life with the possibility of parole after serving a minimum of ten years. No direct appeal was taken.

On January 31, 2002, appellant filed a motion to withdraw a guilty plea in the district court. The State opposed the motion. On February 21, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his plea was not entered knowingly and voluntarily. A guilty plea is presumptively valid, and the defendant has the burden of establishing that the plea was not entered

knowingly and intelligently.¹ This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.²

Appellant was originally charged with murder with the use of a deadly weapon. Before accepting appellant's guilty plea, the district court conducted a plea canvass during which appellant stated that his plea was given freely and voluntarily, and that he believed it was in his best interest to plead guilty to second degree murder in order to take advantage of the lesser sentencing requirements.³ Appellant also signed a written plea agreement. The written plea agreement fully set forth the elements of the crime. Moreover, in exchange for appellant's entry of a plea of guilty to second degree murder, the State agreed to drop the deadly weapon enhancement. Therefore, based on our review of the entire record and the totality of the circumstances, we conclude that the district court did not abuse its discretion in finding that appellant's plea was knowingly and voluntarily entered.⁴

¹Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

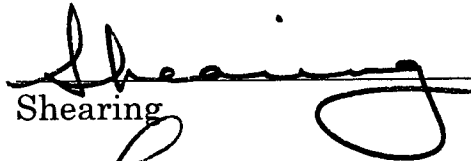
²Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).


³See Lundy v. Warden, 89 Nev. 419, 422, 514 P.2d 212, 213-14 (1973) ("When an accused expressly represents in open court that his plea is voluntary, he may not ordinarily repudiate his statements to the sentencing judge.").

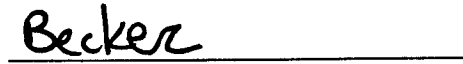
⁴See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996); Bryant, 102 Nev. at 272, 721 P.2d at 368.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Leavitt, J.


Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Thomas Robert Brand Sr.
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).