

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR DEVINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39574

FILED

OCT 16 2002

ORDER OF AFFIRMANCE

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

This is an appeal from two judgments of conviction entered pursuant to guilty pleas. In District Court Case No. C175956, appellant Arthur Devine pleaded guilty to one count each of robbery with the use of a deadly weapon and robbery. Devine was sentenced to serve two consecutive prison terms of 72 to 180 months and one concurrent prison term of 72 to 180 months. In District Court Case No. C175991, Devine pleaded guilty to one count of robbery with the use of a deadly weapon. Devine was sentenced to serve two consecutive prison terms of 72 to 180 months to run concurrently with the sentence imposed in Case No. C175956.

On January 29, 2002, Devine filed motions to withdraw his guilty pleas in Case Nos. C175956 and C175991. The State opposed the motions. Without hearing arguments from counsel, the district court denied the motions, finding Devine's guilty pleas were knowing and voluntary. Devine filed the instant appeal.

Devine first contends that the district court erred in denying his post-sentence motions to withdraw his guilty pleas because, prior to pleading guilty, he "did not fully comprehend the penalties involved and the penalty ranges he was facing." In particular, Devine contends that he

pleaded guilty based on his counsel's and the district attorney's representations that he would receive a minimum sentence of six years with all counts running concurrently. We conclude that Devine's contention lacks merit.

On a motion to withdraw a guilty plea, the defendant has the burden of showing that the guilty plea was not entered knowingly and intelligently.¹ However, the "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."²

In the instant case, the record belies Devine's claims about counsel's and the district attorney's representations with respect to sentencing.³ At the waiver of preliminary examination hearings, Devine was informed of the terms of the plea agreements, including that the State had retained the right to argue "across the board" at sentencing, rather than recommend a particular sentence. Additionally, the plea agreements

¹See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

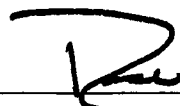
²State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

³We also reject Devine's argument that he was deprived of his right to counsel when the district court: (1) ruled on his motions to withdraw the guilty pleas "without giving Devine's counsel the opportunity to be heard"; and (2) forced Devine to argue his own motion when his counsel did not appear at the scheduled hearing. The district court did not force Devine to argue his own motions, but instead ruled on Devine's motions without hearing arguments from counsel. We conclude that the district court did not abuse its discretion in ruling on the motions without conducting an evidentiary hearing because Devine's claim that his guilty pleas were not knowing was belied by the record.

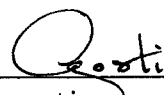
informed Devine that the district court had discretion to impose a sentence between 2 to 15 years for each robbery count, as well as an equal and consecutive term for the use of the deadly weapon. Finally, in the plea agreements, Devine acknowledged that he had not been promised a particular sentence by anyone. Accordingly, Devine has failed to show that his guilty pleas were not knowing or voluntary.

Having considered Devine's contentions and concluded that they lack merit, we

ORDER the judgments of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Sally L. Loehrer, District Judge
Kirk T. Kennedy
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk