

IN THE SUPREME COURT OF THE STATE OF NEVADA


WILLIAM JOSEPH BRUNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39600

FILED

JAN 24 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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

On November 16, 2000, Bruns was convicted, pursuant to a guilty plea, of two counts of possession of a credit card without the cardholder's consent. The district court sentenced Bruns to serve two consecutive prison terms of 19 to 48 months. Bruns appealed, and this court affirmed his conviction.¹

On October 23, 2001, Bruns filed a proper person motion to withdraw his guilty plea in the district court. On March 29, 2002, Bruns filed a request for the appointment of counsel.² The district court did not

¹Bruns v. State, Docket No. 37145 (Order of Affirmance, March 5, 2001).

²Bruns had previously requested the appointment of counsel on July 10, 2001 and, again, on March 29, 2002. Additionally, Bruns filed another
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order an answer from the State or conduct an evidentiary hearing on the motion. On April 16, 2002, the district court denied Bruns' motion and request for the appointment of counsel. This timely appeal followed.³

In his motion, Bruns contended that the State breached the plea agreement by failing to recommend either probation or concurrent sentences. Bruns also contended that the district court abused its discretion in denying Bruns' presentence motion to withdraw his guilty plea because Bruns misunderstood the terms of the plea negotiations; namely, Bruns believed that he would receive either probation or concurrent sentences. Finally, Bruns contended that the district court abused its discretion in refusing to grant him a continuance at the sentencing hearing. We conclude that the district court did not err in denying Bruns' motion to withdraw his guilty plea.

Preliminarily, we note that Bruns waived the claims raised in his motion by failing to raise them on direct appeal from the judgment of

... continued

request for the appointment of counsel after the district court denied his motion on May 10, 2001.

³To the extent that Bruns appeals from the district court order denying his request for appointment of counsel, filed on April 16, 2002, we conclude the district court did not abuse its discretion in denying that request. To the extent that Bruns appeals from the district order denying his request for appointment of counsel, filed on May 28, 2002, after the district court denied Bruns' motion to withdraw the plea, we conclude that order is not appealable. See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

conviction.⁴ Nonetheless, even assuming Bruns' claims were not waived, we conclude that the district court did not abuse its discretion in denying the motion to withdraw.⁵ The record reveals that the State did not breach the plea agreement because the State never promised to recommend concurrent sentences or probation. The original plea agreement provided that the State would be free to argue for appropriate sentences. In exchange for Bruns' guilty plea to two counts of possession of a credit card without the cardholder's consent, the State agreed to dismiss or not pursue any transactionally-related charges or enhancements.⁶ Moreover, at the plea canvass, the district court advised Bruns that it could impose the sentences to run consecutively, and Bruns acknowledged that he could receive consecutive sentences. Bruns further acknowledged that the

⁴See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). We note that 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. See NRS 177.045; Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984).

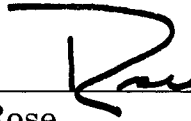
⁵See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).


⁶The State represented, at the sentencing hearing, that there were originally approximately twenty counts involving use of a credit card without consent that it would not pursue. Additionally, the State represented that it had agreed not to seek habitual criminal adjudication; Bruns was eligible for habitual criminal status because he had four prior felony convictions and eight prior misdemeanor convictions.


district court did not have to follow any plea bargain or sentence recommended by the attorneys.⁷ We therefore conclude that Bruns' claims with respect to the invalidity of his guilty plea are belied by the record and, therefore, the district court did not err in denying the motion.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

⁷See Rouse v. State, 91 Nev. 677, 678, 541 P.2d 643, 644 (1975) (holding that appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing).

⁸See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰On October 24, 2002, Bruns filed a motion to voluntarily withdraw his appeal. In light of this order, we deny the motion as moot.

cc: Hon. Steven P. Elliott, District Judge
William Joseph Bruns
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk