IN THE SUPREME COURT OF THE STATE OF NEVADA

MILTON JOHN PAPPILLION,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39697

FILED

FEB 27 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford[1] plea, of battery with the use of a deadly weapon causing substantial bodily harm. The district court sentenced appellant Milton Pappillion to serve 24 to 120 months in the Nevada State Prison.

Pappillion argues that the district court erroneously denied his pre-sentence motion to withdraw his guilty plea because he did not intend to injure anyone and did not inflict substantial bodily harm because he "was attempting to escape a threatening situation." We conclude that Pappillion's contention lacks merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea prior to sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.[2] A defendant has no right, however, to withdraw his plea merely because he moved to do so prior to sentencing or because the State failed to establish

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

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

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actual prejudice.[3] Rather, in order to show that the district court abused its discretion in denying his motion to withdraw, Pappillion has the burden of showing that his plea was not entered knowingly and intelligently.[4] In reviewing a ruling on a pre-sentence motion to withdraw a guilty plea, this court "'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.'"[5]

We conclude that Pappillion has not demonstrated that his plea was not entered knowingly and intelligently. We conclude further that the district court did not abuse its discretion by denying his motion. At the plea canvass, Pappillion stated that he had read and understood everything contained in his guilty plea memorandum, including the consequences of the plea, the constitutional rights he was waiving, and the potential sentence he faced. He also stated that he had discussed the plea agreement with his attorney. Based on the totality of the facts and circumstances surrounding Pappillion's plea, we conclude that it was entered knowingly and intelligently.[6]

Pappillion's contentions that he is actually innocent of the crime are also without merit. In accepting an Alford plea or a plea of nolo

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[3]Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[4]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[5]Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368); Hubbard, 110 Nev. at 675, 877 P.2d at 521.

[6]See State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000).

contendere, a district court must determine not only that there is a factual basis for the plea but 'must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.'"[7] As in Gomes, the record of the plea canvass in this case shows that Pappillion gained a substantial benefit by entering an Alford plea to avoid habitual criminal adjudication and additional battery counts arising from this incident. Moreover, the district court had an adequate factual basis to accept Pappillion's plea. The prosecutor informed the court that the victims would testify that Pappillion left the bar where he worked and walked into the parking lot outside the bar. They would testify further that Pappillion then drove his car over to where the victims were standing in the parking lot, raced his engine, and struck the victims with his car. We conclude that the district court properly accepted Pappillion's plea.

We note that Pappillion attempts to analogize the facts of his case to those in Mitchell v. State.[8] In Mitchell, the appellant told her attorney that she had misunderstood the plea negotiations, and she also made a "credible claim of factual innocence."[9] Based on these considerations, along with the fact that the State was not prejudiced, this court reversed the district court's denial of Mitchell's motion to withdraw

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[7]State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996) (quoting Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

[8]109 Nev. 137, 848 P.2d 1060 (1993).

[9]Id. at 139-41, 848 P.2d at 1060-62; see also Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998).

her plea.[10] Pappillion argues we should do the same in this case. However, Pappillion does not claim to misunderstand the plea negotiations, and we conclude that his claim of innocence, that the victims actually ran in front of his car, is less than credible. Therefore, we conclude that Mitchell does not apply to the facts of this case.

Pappillion's further claim that he did not inflict substantial bodily harm because he was attempting to escape a threatening situation lacks merit. The amount of harm suffered by the victims when he hit them with his car is independent of whatever it was he was trying to accomplish when he struck them.

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

ORDER the judgment of conviction AFFIRMED.[11]

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

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[10]Mitchell, 109 Nev. at 141, 848 P.2d at 1062.

[11]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Jackie Glass, District Judge
Robert M. Draskovich, Chtd.
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk