

IN THE SUPREME COURT OF THE STATE OF NEVADA


CHRISTOPHER AMACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39975

FILED

NOV 08 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On September 21, 2001, appellant Christopher Amack was convicted, pursuant to a nolo contendere plea,¹ of one count of attempted robbery with the use of a deadly weapon. The district court sentenced Amack to serve two consecutive prison terms of 12 to 72 months, and then suspended execution of the sentences and placed Amack on probation for a period not to exceed 5 years. Amack did not file a direct appeal.

On January 22, 2002, Amack filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition, and the district court appointed counsel. Without conducting an

¹Although the plea agreement refers to a guilty plea, we note that, at the plea canvass, Amack actually entered a plea of nolo contendere. See State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996). (“whenever a defendant maintains his or her innocence but pleads guilty . . . the plea constitutes one of nolo contendere”).

evidentiary hearing, the district court denied the petition. Amack filed the instant appeal.

Amack contends that the district court erred in denying his post-conviction petition because his nolo contendere plea was not knowingly and voluntarily entered. Specifically, Amack contends that his plea was infirm because the district court did not advise Amack of his constitutional rights or inform him that, by pleading nolo contendere, he was waiving those rights. We conclude that Amack's contention lacks merit.

On appeal from a district court's determination of the validity of a plea, this court presumes that the lower court correctly assessed the validity of the plea and will not reverse absent a clear showing of abuse of discretion.² To demonstrate a constitutionally valid nolo contendere plea, the record must show that the plea was knowingly and voluntarily entered with real notice of the nature of the charges and direct consequences of the plea.³ Further, in accepting a nolo contendere plea, a district court "must determine that there is a factual basis for the plea, and . . . must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence."⁴ This court will review the entire record and look to the totality of circumstances of the case, not just the technical

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

³NRS 174.035; Gomes, 112 Nev. at 1480, 930 P.2d at 706.

⁴Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982) (citing North Carolina v. Alford, 400 U.S. 25, 38 n.10 (1970)).

sufficiency of the plea canvass, to determine whether such a plea was validly entered.⁵

In the instant case, the district court found that Amack's nolo contendere plea was knowing and voluntary. The district court did not abuse its discretion in so finding because the record reveals that the plea was validly entered. In particular, at the plea canvass, Amack represented to the court that he was entering a plea because the State agreed to recommend drug court in lieu of prison⁶ and allow Amack to plead to an attempted robbery instead of a completed robbery. Although Amack denied having a weapon at the altercation, which occurred at a bank teller machine, Amack admitted that, at trial, the State would proffer the victim's testimony that Amack wielded a weapon in the course of a robbery. Moreover, in the signed plea agreement: (1) Amack conceded that the State could prove the facts set forth in the amended information; (2) acknowledged the constitutional rights he was waiving by his entry of plea, as well as the direct consequences of the criminal conviction; and (3) represented that his attorney had explained possible defense strategies and that he was satisfied with the services of his attorney. Because the totality of circumstances indicate that Amack entered a knowing and valid

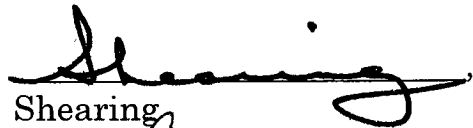
⁵See Gomes, 112 Nev. at 1481, 930 P.2d at 706.


⁶Pursuant to the terms of the plea agreement, upon completion of drug court, Amack would have been allowed to withdraw his plea to the felony attempted burglary count and enter a plea to a misdemeanor battery with a sentence of time served. However, Amack failed to complete the drug court program.


nolo contendere plea, we conclude the district court did not abuse its discretion in denying the petition.

Having considered Amack's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk