

IN THE SUPREME COURT OF THE STATE OF NEVADA

CINQUE GRIM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40230

FILED

NOV 05 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance.<sup>1</sup> The district court sentenced appellant Cinque Grim to serve a prison term of life with the possibility of parole after ten years.

Grim's sole contention is that the district court erred in denying his presentence motion to withdraw his guilty plea. Grim contends that he initially entered a guilty plea "in order to allow him to provide substantial assistance thereby qualifying for a sentence reduction."<sup>2</sup> In his motion below, Grim requested that he be allowed to withdraw his guilty plea because the consolidated narcotics unit (CNU) allegedly failed to use his assistance in a timely manner, thus "rendering his ability to do substantial assistance difficult." The district court mistakenly informed Grim that such a motion and change of plea could only be granted "based on constitutional reasons." After considering the plea canvass, the parties' briefs, and the arguments of counsel, the district court denied Grim's motion, stating:

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<sup>1</sup>See NRS 453.3385(3).

<sup>2</sup>See NRS 453.3405(2).

[T]he fact remains, Mr. Grim, that when you enter into a contract – I’m not going to go there. . . . You understood what you were doing at the time that you changed your plea. I acknowledged that fact. I go through these canvasses – As you know, you’ve been here many, many times, as you know, I take them seriously. When a person enters a guilty plea, that’s a very serious thing. And I feel like you understood your constitutional rights.

As far cooperation, it takes two to tango. And the fact that you ran hurt you in the eyes of the law-enforcement personnel. And I’m not going to allow that to change anything, change the plea.

On appeal, Grim contends that the district court erred in applying the wrong standard in denying his motion, specifically, that “there is no requirement that a constitutional basis must exist to authorize a court to withdraw a previously entered guilty plea.” Grim also contends, citing to Mitchell v. State for support, that the district court failed to properly review the entire record prior to denying his motion.<sup>3</sup> We conclude that although the district court may have incorrectly stated the law, it properly denied Grim's motions.<sup>4</sup>

“A district court may, in its discretion, grant a defendant’s [presentence] motion to withdraw a guilty plea for any ‘substantial reason’

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<sup>3</sup>109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

<sup>4</sup>See Cunningham v. State, 100 Nev. 396, 398-99 n.1, 683 P.2d 500, 501 n.1 (1984) (“where lower court's decision was otherwise correct, error will not be found despite the fact that court gave wrong reasons in support of its decision”) (citing Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981)).

if it is 'fair and just.'"<sup>5</sup> "To determine whether the defendant advanced a substantial, fair, and just reason to withdraw a [guilty] plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."<sup>6</sup> The district court "has a duty to review the entire record to determine whether the plea was valid. . . . [and] may not simply review the plea canvass in a vacuum."<sup>7</sup>

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.<sup>8</sup> On appeal from the district court's determination, we 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.<sup>9</sup> If the motion to withdraw is based on a claim that the guilty plea was not entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.<sup>10</sup>

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<sup>5</sup>Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

<sup>6</sup>Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

<sup>7</sup>Mitchell, 109 Nev. at 141, 848 P.2d at 1062.

<sup>8</sup>NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225, n.3 (1984)).

<sup>9</sup>Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

<sup>10</sup>See id.

The gist of Grim's argument below, although it was never articulated clearly as such, was that he did not enter his guilty plea knowingly and intelligently because the State never intended to give him opportunity after opportunity to provide substantial assistance to law enforcement personnel in order to qualify for a sentence reduction. Because the State allegedly breached the plea agreement, Grim contends that he should be allowed to withdraw his guilty plea. Nevertheless, at the hearing on the motion in the district court, defense counsel conceded that the plea canvass was thorough and that Grim's plea was entered knowingly and voluntarily.

Our review of the record on appeal reveals that Grim's potential assistance and possible sentence reduction was merely an expectation on his behalf and not part of the formal plea agreement. At his arraignment, Grim stated that he was entering his guilty plea with the hope of receiving probation. This court has stated that a "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."<sup>11</sup> Moreover, contrary to Grim's assertion, a defendant does not provide assistance and receive a sentence reduction as a matter of right.<sup>12</sup> In Grim's case, he was given opportunities by CNU to provide assistance, and at one point, Grim absconded, fled from the jurisdiction, and was not

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<sup>11</sup>State 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)).

<sup>12</sup>See Matos v. State, 110 Nev. 834, 837-38, 878 P.2d 288, 290-91 (1994).

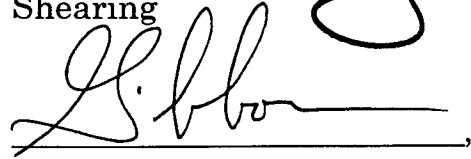
located until he was arrested in another state on another charge. Although the district court may not have applied the correct principles of law in denying Grim's motion to withdraw his guilty plea, we conclude that the district court did not abuse its discretion because, considering the totality of the circumstances, Grim failed to advance a substantial, fair, and just reason.

Accordingly, having considered Grim's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Steven R. Kosach, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk