

IN THE SUPREME COURT OF THE STATE OF NEVADA

NYUTU WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40251

FILED

JAN 28 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,¹ of sexual assault on a minor under the age of 16 years (count I) and lewdness with a child under the age of 14 years (count II). The district court sentenced appellant Nyutu Woods to serve a prison term of 60 to 240 months for count I and a consecutive prison term of 36 to 240 months for count II.

Woods first contends that the district court abused its discretion in denying his presentence motion to withdraw his nolo contendere plea because it was not knowing. In particular, Woods claims that his plea was not knowing because: (1) he did not understand the terms of the plea negotiations; and (2) his guilty plea was accepted before he signed the guilty plea agreement, "thus undercutting the significance of the plea colloquy." We conclude that Woods' contentions lack merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason and if it is fair and

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

just.² On a motion to withdraw a guilty plea, the defendant has the burden of showing that his guilty plea was not entered knowingly and intelligently.³ To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.⁴ "On appeal from a district court's denial of a 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

In the instant case, the district court's finding that Woods entered a knowing and voluntary plea is supported by substantial evidence. At the plea canvass, Woods advised the district court that he had read and understood the plea agreement. The plea agreement advised Woods of the constitutional rights he was waiving in entering a nolo contendere plea, the direct consequences resulting from the criminal conviction, and the elements of the charged offenses. Moreover, in accepting Woods' plea, the district court sufficiently determined the factual basis for the entry of the plea and resolved the conflict between Woods' entry of a nolo contendere plea and his claim of innocence.⁶ Particularly, at Woods' plea canvass, the State recited the factual basis for the nolo contendere plea to sexual assault: that the thirteen-year-old

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

³See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁴See id.

⁵Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

⁶See Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982); see also Gomes, 112 Nev. at 1481, 930 P.2d at 706-07.

victim would testify that while she was sleeping, Woods, a family friend who was living in the apartment, came into her room, put his penis in her vagina, that she awoke in pain, and ran screaming out of the room.⁷ Finally, the record of the plea canvass, as well as the guilty plea agreement, reveals that Woods entered the plea agreement because he believed it was in his best interest. In particular, in exchange for Woods' nolo contendere plea, the State allowed Woods to plead to a lesser offense⁸ and agreed to a stipulated sentence, which was imposed by the district court. Accordingly, the district court did not err in finding that Woods' plea was knowing and voluntary.

Second, Woods argues that the district court abused its discretion in denying his presentence motion to withdraw because his attorney coerced him into pleading nolo contendere. We conclude that Woods' claim that his plea was coerced is belied by the record. At the plea canvass, Woods indicated that he was pleading nolo contendere to avoid a harsher punishment and that he was entering his plea freely and voluntarily. Further, the plea agreement stated that Woods was accepting the plea agreement because he believed it was in his best interest, and he was not "acting under duress coercion or by virtue of any promise of leniency." We therefore conclude that the district court did not abuse its discretion in finding that Woods' guilty plea was not the product of coercion.

Finally, Woods contends that the district court abused its discretion in denying his presentence motion to withdraw his nolo

⁷See Bryant, 102 Nev. at 271, 721 P.2d at 367 (defendant may adopt factual statement of guilt made by judge or prosecutor).

⁸Woods was originally charged with sexual assault on a minor under the age of 14 years, an offense punishable by a mandatory sentence of life with parole eligibility in 20 years. See NRS 200.366(3)(c).

contendere plea because it was based on an illusory promise. In particular, Woods claims that he should be allowed to withdraw his plea because: (1) he was required to waive his right to a preliminary examination without any definite plea offer having been made; and (2) he pleaded guilty to a different and presumably less favorable offer than originally negotiated with the State. Woods' claims are belied by the record.

The record reveals that, at the waiver of the preliminary hearing, defense counsel represented that the State had made a definite plea offer; namely, the State offered to allow Woods to plead to a lesser count of sexual assault, punishable by a prison term of life with parole eligibility in 10 years. Defense counsel also indicated that the State had agreed to keep the plea offer available for a period of time to allow the defense to perform some independent medical tests.⁹ Woods then acknowledged that he understood the terms of the plea offer and desired to waive his preliminary hearing. Moreover, the State's prior plea agreement discussed at the waiver of preliminary hearing was actually less favorable than the one Woods eventually accepted. As the prosecutor explained at the hearing on Woods' presentence motion to withdraw the plea, Woods received a stipulated prison term of 8 to 40 years instead of a prison term of 10 years to life because the medical tests of the victim and her clothing came back negative for the presence of Woods' sperm.¹⁰

⁹At the hearing on the motion to withdraw, the prosecutor informed the district court that the State's original plea offer was contingent on Woods waiving the preliminary examination so that the young victim would not have to testify.


¹⁰The prosecutor noted that the results were not surprising in light of the fact that the swab was not well-preserved, as it was taken by the victim's mother, placed in a sandwich bag, and given to the police the day after the attack. Because the State's test results were favorable to Woods,

continued on next page . . .


Accordingly, the district court did not err in finding that Woods' nolo contendere plea was not based on an illusory promise.¹¹

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

ORDER the judgment of conviction AFFIRMED.


Shering, J.


Leavitt, J.


Becker, J.

cc: Hon. Joseph T. Bonaventure, District Judge
Amesbury & Schutt
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

... continued

we reject Woods' other claim that his trial counsel was ineffective for failing to order additional independent tests. See Strickland v. Washington, 466 U.S. 668 (1984).

¹¹In light of our conclusion that Woods entered a knowing and voluntary plea, we reject his claims that his trial counsel was ineffective with regard to Woods' entry of plea. See Nollette v. State, 118 Nev. ___, 46 P.3d 87 (2002).