

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES BERNARD SANTOYA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40538

FILED

OCT 15 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant James Santoya's post-sentence motions to withdraw his nolo contendere plea.

On March 1, 2002, the district court convicted Santoya, pursuant to a nolo contendere plea, of one count of sexual assault on a child, in violation of NRS 200.366. The district court sentenced Santoya to serve a term of life in the Nevada State Prison with the possibility of parole in twenty years. Santoya filed a direct appeal from his judgment of conviction, contending that the district court improperly denied his pre-sentence motion to withdraw his plea. This court issued an order affirming Santoya's conviction.¹

¹Santoya v. State, Docket No. 39300 (Order of Affirmance, April 21, 2003).

On March 11, 2002,² and on August 21, 2002, Santoya filed post-sentence motions to withdraw his plea in the district court. The State opposed the motions. On October 24, 2002, the district court issued an order denying Santoya's motions. This appeal followed.

A guilty plea is presumptively valid, and the burden is on the defendant to show that it was not freely, knowingly, and voluntarily made under a totality of the circumstances from the record.³ NRS 176.165 provides that a defendant may file a post-sentence motion to withdraw a plea to correct a manifest injustice. A district court's denial of a motion to withdraw a plea will be reviewed for an abuse of discretion.⁴

In his March 11, 2002, motion to withdraw his plea, Santoya contended that his plea should be withdrawn on the same grounds he alleged in his pre-sentence motion to withdraw his plea. Essentially, Santoya's post-sentence motion to withdraw his plea was a motion for reconsideration of the district court's earlier decision to deny his pre-sentence motion to withdraw his plea. However, we affirmed the district court's denial of Santoya's pre-sentence motion to withdraw his plea on direct appeal. Our decision is the law of the case.⁵ Therefore, as Santoya's

²We note that Santoya's March 11, 2002, motion was filed with the assistance of counsel.

³Freese v. State, 116 Nev. 1097, 1104, 13 P.3d 442, 447 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁴See Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980).

⁵See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

pre-sentence motion was properly denied by the district court, we conclude that the district court did not abuse its discretion in denying his motion to withdraw his plea.

Santoya also contended in his March 11, 2002, motion that he was incompetent to enter his plea and, therefore, he should be permitted to withdraw it.⁶

A defendant is competent to enter a plea if he has a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and has 'a rational as well as factual understanding of the proceedings against him.'"⁷ The district court is required to conduct a hearing when there is sufficient evidence that raises a reasonable doubt as to a defendant's competency.⁸

Our review of the record, which includes transcripts of Santoya's plea canvass and sentencing hearing, reveals that Santoya had the assistance of counsel throughout the proceedings. Santoya's communications with the district court also demonstrate that Santoya had both a rational and factual understanding of the proceedings, as his answers to questions from the district court were both rational and clear. Other than Santoya's bare allegations that he had previously attempted

⁶See NRS 178.400.

⁷Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)); see also Morales v. State, 116 Nev. 19, 22, 992 P.2d 252, 254 (2000).

⁸See Baal v. State, 106 Nev. 69, 73, 787 P.2d 391, 394 (1990).

suicide and depression runs in his family, the record is void of any reasonable indication that he was incompetent to enter his plea. Therefore, we conclude that there was insufficient evidence to raise a reasonable doubt about Santoya's competency, and that the district court did not abuse its discretion by denying his March 11, 2002, motion.

In Santoya's August 21, 2002, motion to withdraw his plea, he contended that his constitutional rights were violated when he entered his plea because he was not informed that he was required to pass a sex offender psych panel before being paroled.⁹

A district court has a duty to ensure that a defendant "has a full understanding of both the nature of the charges and the direct consequences arising from a plea."¹⁰ This duty, however, does not require a district court to inform a defendant of the parole consequences of a plea.¹¹ Therefore, Santoya cannot show that he suffered a manifest injustice sufficient to permit him to withdraw his plea because the district court was under no duty to inform him about the sex offender psych panel requirement for parole before accepting his plea.

Having reviewed the record on appeal, and for the reasons set for above, we conclude that the district court did not abuse its discretion

⁹See NRS 213.1214.

¹⁰Little v. Warden, 117 Nev. 845, 849, 34 P.3d 540, 543 (2001).

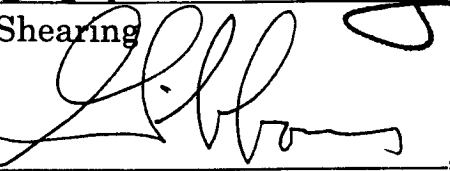
¹¹See Anushevitz v. Warden, 86 Nev. 191, 194, 467 P.2d 115, 117-18 (1970).

by denying Santoya's post-sentence motions to withdraw his plea.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
James Bernard Santoya
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk