

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORNEL LAMAR JOHNSON A/K/A
CORNELL LAMAR JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40792

FILED

NOV 07 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 robbery. The district court sentenced appellant Cornel Lamar Johnson to serve a prison term of 60-180 months.

Johnson's sole contention is that the district court erred in denying his presentence motion to withdraw his guilty plea.¹ Johnson argues that he did not have sufficient time to either discuss with his counsel the proposed plea offer made by the State or consider the consequences of the deal. As a result, Johnson claims that his guilty plea was not a knowing or voluntary decision.

¹The appendix submitted by Johnson in this appeal does not include either his presentence motion to withdraw the guilty plea, the State's opposition to the motion, the second amended criminal information, or the written guilty plea agreement. See NRAP 30(b) (requiring inclusion in appellant's appendix of matters essential to the decision of issues presented on appeal); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Counsel are cautioned that failure to comply with the requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).

“A district court may, in its discretion, grant a defendant’s [presentence] motion to withdraw a guilty plea for any ‘substantial reason’ if it is ‘fair and just.’”² “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.”³ 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.”⁴

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.⁵ 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.⁶ If the motion to withdraw is based on a claim that the guilty plea was not

²Woods 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.

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

⁴Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁵NRS 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)).

⁶Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.⁷

We conclude that the district court did not abuse its discretion in denying Johnson's presentence motion to withdraw his guilty plea. Johnson failed to demonstrate that his guilty plea was not entered knowingly and intelligently. In fact, at the hearing on the motion in the district court, counsel conceded that the district court's plea canvass was thorough. Counsel also informed the district court that he had discussed the State's plea offer with Johnson, and explained the consequences of going to trial, prior to the entry of his guilty plea.⁸ Nevertheless, soon after entering his guilty plea, Johnson changed his mind, claiming that he did not have enough time to consider his options, and instead, wished to proceed to trial.

In denying Johnson's motion, the district court stated:

This guy [Johnson] is not a 18-year-old kid that he's unfamiliar with the criminal system, this man is an experienced thief. . . . He has four felonies for robbery convictions. . . . He probably knows more about the law than many lawyers, than anybody else knows about it. . . . He cut his deal, cut the deal to cut his losses and according to the law that I see, this wasn't, as you say, made undue urgency plea in haste [sic].

...

⁷See id.


⁸The initial criminal information charged Johnson with one count each of burglary and robbery with the use of a deadly weapon, and put him on notice that the State intended on punishing him pursuant to the habitual criminal statute, NRS 207.012.

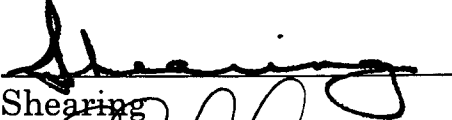
This [case] has been numerously continued . . . looking at the totality of the circumstances, he's had many chances to reflect upon his decision to accept this guilty plea agreement. . . . I think he had ample time to think about the consequences of his plea. He was fully canvassed on the record. The defendant affirmed, he understood the entire agreement. I agree with the State now he has buyer's remorse.

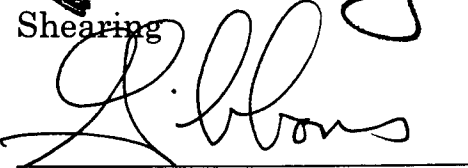
Based on the totality of the circumstances, the district court concluded that Johnson did not meet his burden of demonstrating that his guilty plea was not entered knowingly, intelligently, and voluntarily, or show that Johnson did not understand the consequences of his guilty plea.

Accordingly, having considered Johnson's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Kirk T. Kennedy
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk