

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE ESPARZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40956

FILED

FEB 05 2004

ORDER OF AFFIRMANCE

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to an Alford¹ plea, of one count of sexual assault on a minor under the age of sixteen (count I) and one count of sexual assault (count II). The district court sentenced appellant Jesse Esparza to serve twenty years with the possibility of parole after serving five years for count I, and a concurrent term of life with the possibility of parole after serving ten years for count II in the Nevada State Prison. The district court further imposed a special sentence of lifetime supervision upon completion of any term of parole or imprisonment.

Esparza contends that the district court erred in denying his presentence motion to withdraw a guilty plea without an evidentiary hearing because his claim that he was unaware that he could not receive probation because he was provided conflicting information from either his attorneys or by the court interpreters was not belied by the record. We conclude that the district court did not err.

NRS 176.165 permits a defendant to file a motion to withdraw a plea prior to sentencing. The district court has discretion to grant such a

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

motion for any substantial, fair, and just reason.² To determine whether the defendant advanced a substantial, fair, and just reason, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.³ On appeal from a district court's determination, we will presume that the district court correctly assessed the validity of the plea, and we will not reverse the district court's determination absent a clear showing of an abuse of discretion.⁴

In Little v. Warden,⁵ we held that "a defendant must be aware that his offense is nonprobational prior to entering his guilty plea because it is a direct consequence arising from the plea."⁶ In determining whether the defendant was aware that his sentence was nonprobational, the entire record must be reviewed.⁷ The defendant is not entitled to a hearing on the matter if the district court determines that the defendant's claim is belied by the record.⁸

Here, the district court concluded that Esparza's claim was belied by the record and therefore he was not entitled to an evidentiary

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

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

⁴See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁵117 Nev. 845, 34 P.3d 540 (2001).

⁶Id. at 847-48, 34 P.3d at 542.

⁷See id. at 847-48, 34 P.3d at 542.

⁸See id. at 852, 34 P.3d at 544-45.

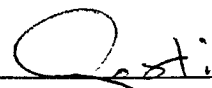
hearing. At the plea canvass, the court provided Esparza a Spanish-language interpreter because he did not speak any English. The district court asked Esparza, with the aid of the interpreter, if he understood what he was being charged with and Esparza responded affirmatively. He was asked if he signed the guilty plea agreement, if it was read to him in Spanish before he signed it, and if he understood it. Esparza responded affirmatively to all questions. Esparza also stated that he signed the agreement freely and voluntarily and that it was in his best interest to sign it. (As part of the plea bargain, the State dropped more than 30 other felony counts against Esparza.) The State then brought the court's attention to a mistake in the guilty plea agreement which stated that he was not eligible for probation on count II unless he got a psychologist report, but that the agreement correctly reflected that Esparza was not eligible for probation on count I. The State then specifically stated that Esparza was not eligible for probation on either count I or count II. The mistake was corrected, in the presence of Esparza, to read that he was not eligible for probation on either count. Esparza's counsel did not object to the corrections. Esparza was then advised that he was subject to lifetime supervision. At the conclusion of the plea canvass, the district court accepted Esparza's plea.


We conclude that the district court did not err in dismissing Esparza's motion without an evidentiary hearing. Esparza's claim that he was not aware that the offenses to which he entered an Alford plea were nonprobational was belied by the record. Furthermore, his claim that he was given conflicting information from his attorneys and/or his court interpreters is not accompanied by sufficient factual allegations that

would warrant an evidentiary hearing.⁹ He does not state what his attorneys allegedly told him regarding his ineligibility for probation or what the court interpreters told him regarding the issue. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).