

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUFUS GRIGGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40995

FILED

JUN 03 2004

ORDER OF AFFIRMANCE

ARNEITHA BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of a controlled substance for the purpose of sale.

On February 14, 2002, appellant entered a guilty plea to one count possession of a controlled substance for the purpose of sale. On March 12, 2002, appellant filed a pre-sentence motion to withdraw his guilty plea in the district court. The State opposed the motion. On March 20, 2002, the district court denied appellant's pre-sentence motion and entered an order pursuant to NRS 453.336(2), suspending the entry of a judgment of conviction, placing appellant on probation for a period of three years, and requiring, among other things, that appellant enter and successfully complete the district court's diversion program. On February 11, 2003, due to appellant's failure of the NRS Chapter 453 diversion program, the district court entered a judgment rescinding its prior order, finding appellant guilty, and sentencing appellant to serve a term of 12-32

months in the Nevada State Prison with jail time credit totaling two hundred and one days. This appeal followed.¹

Appellant contends that the district court erred in denying his pre-sentence motion to withdraw his guilty plea. He argues that his plea was not entered knowingly and intelligently because he was never informed of the elements of the charge of possession of a controlled substance for the purpose of sale.

A pre-sentence motion to withdraw a guilty plea may be granted "where for any substantial reason the granting of the privilege seems 'fair and just.'"² To determine whether a defendant advanced a substantial, fair, and just reason to withdraw his guilty plea, the district court must consider the totality of the circumstances and assess whether

¹On February 18, 2003, appellant filed two proper person notices of appeal. On March 4, 2003, appellant filed a proper person post-conviction motion to withdraw his guilty plea in the district court. On April 1, 2003, the district court entered an order denying the post-conviction motion. The district court also appointed counsel to represent appellant on appeal. Although the language in appellant's notices of appeal is arguably ambiguous regarding the precise determination he seeks to appeal, his intention to appeal from the district court's judgment of February 11, 2003, can be reasonably inferred from the text of the notices. To the extent that appellant's counsel attempts to argue on appeal that it was error to deny the post-conviction motion to withdraw appellant's guilty plea, we note that this court does not have jurisdiction to consider those assignments of error since appellant's notices of appeal were filed prior to the post-conviction motion and no subsequent notice of appeal was filed after the district court's denial of the post-conviction motion.

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

the defendant entered the plea voluntarily, knowingly, and intelligently.³ 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.⁴ The burden is on the defendant to demonstrate that his guilty plea was not entered knowingly and intelligently.⁵

We conclude that the district court did not abuse its discretion in denying appellant's pre-sentence motion to withdraw his guilty plea. During the plea canvass, appellant affirmed that he had read the plea memorandum, that he discussed the memorandum with his attorney, and that he understood the consequences of the plea, the constitutional rights he was giving up, and the potential sentence he faced by pleading guilty. The signed plea memorandum specifically enumerated the elements of possession of a controlled substance for the purpose of sale and the terms of the plea negotiations. Appellant affirmed that he was satisfied with the legal representation provided by his counsel, and acknowledged that pursuant to the plea negotiations, he was pleading guilty to a lesser offense so that he might gain the substantial benefit of participating in the Adult Drug Court program and have a chance at receiving probation. Appellant indicated that he understood that if he went to trial, the State

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


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

⁵See id.

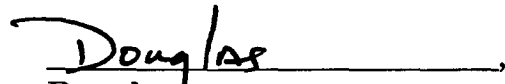
would reinstate the charge of maintaining a place for the purpose of selling and/or using a controlled substance. Based on the totality of the facts and circumstances surrounding appellant's guilty plea, we conclude that appellant has failed to demonstrate that the district court erred in denying his pre-sentence motion to withdraw his plea.⁶

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Rose

 J.
Maupin

 J.
Douglas

cc: Hon. Peter I. Breen, District Judge
Hardy & Associates
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000).