

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN HODGKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41088

FILED

MAY 11 2004

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 Edwin Hodgkins' motion for modification of sentence and his motion to withdraw his guilty plea.

On January 11, 2002, the district court convicted Hodgkins, pursuant to an Alford plea,¹ of attempted murder with the use of a deadly weapon resulting in substantial bodily harm. The district court sentenced Hodgkins to serve two consecutive terms of 65 to 240 months in the Nevada State Prison. No direct appeal was taken.

On November 26, 2002, Hodgkins filed a motion for modification of sentence. On December 4, 2002, Hodgkins filed a motion to withdraw his guilty plea. The State opposed both motions. On April

¹North 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).

30, 2003, the district court issued an order denying Hodgkins' motions.² This appeal followed.

In his motion to modify sentence, Hodgkins claimed that the State mischaracterized his prior misdemeanor conviction, provided insufficient evidence to support his conviction for attempted murder, and used the victim's impact statement to present false and misleading facts to the sentencing court. Hodgkins further claimed that the pre-sentence investigation report (PSI) prepared by the Division of Parole and Probation erroneously stated that his misdemeanor conviction resulted from domestic violence, and that the PSI made it appear that he was without remorse.

"[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."³ Our review of the record on appeal reveals that the majority of Hodgkins' claims fell outside the narrow scope of permissible claims. To the extent that the claims were permissible, Hodgkins failed to demonstrate that the district court relied upon mistaken assumptions about his criminal record when

²The district court order also denied Hodgkins' motions to correct an illegal sentence, strike the State's response to his motion to correct an illegal sentence, strike the State's response to his motion for modification of sentence, and strike the State's opposition to his motion to withdraw guilty plea. However, Hodgkins did not seek review of the district court's decision to deny these motions.

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

passing sentence.⁴ During sentencing, the only aspect of Hodgkins' criminal record raised was a misdemeanor conviction for an assault which occurred in the 1990s. With regard to this conviction, the sentencing court stated:

I want to say for the record what is honestly true, Mr. Hodgkins, which is I'm not going to indulge in speculation as to what happened in the early 90's because I don't know.

What you did with reference to this specific case is sufficient, in my mind, not because I necessarily join in the feeling that you would do this again; I'm not a mind reader or a psychic. But what you did in this case almost resulted in a murder charge.

As such, we conclude that the district court did not rely upon Hodgkins' criminal record when passing sentence, and it did not err in denying Hodgkins' motion for modification of sentence.

In his motion to withdraw his guilty plea, Hodgkins raised several claims challenging the validity of his plea. A guilty plea is presumptively valid, and the defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.⁵ After imposition of a sentence, the district court may allow the withdrawal of a guilty plea only to correct a manifest injustice.⁶ This court will not reverse

⁴See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

⁵Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁶See NRS 176.165.

a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁷ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁸ In accepting an Alford plea, the district court must determine that there is a factual basis for the plea, and resolve the conflict between waiver of trial and the claim of innocence.⁹

First, Hodgkins claimed that his plea was not knowingly, intelligently, and voluntarily made because he was not informed or did not understand the consequences of the plea, the constitutional rights he waived, and the elements of the crime. Based on our review of the record, we conclude that the district court did not err in denying this claim. In the written plea agreement, Hodgkins stated that he discussed with his attorney and understood the consequences of his plea, the waiver of his rights, and the elements of the charges. Hodgkins further stated that the plea agreement was in his best interest and that he signed it voluntarily. During the district court's oral plea canvass, Hodgkins acknowledged that he read the plea agreement, understood the plea agreement, and thought that the plea agreement was in his best interest. Hodgkins specifically acknowledged that he understood the constitutional rights he waived by

⁷Hubbard, 110 Nev. at 675, 877 P.2d at 521.

⁸State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. at 272, 721 P.2d at 368.

⁹Gomes, 112 Nev. at 1481, 930 P.2d at 706; Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

pleading guilty. Thus, under the totality of the circumstances, Hodgkins failed to meet his burden of demonstrating that his plea was not entered knowingly, intelligently, and voluntarily.

Second, Hodgkins claimed that his plea was not knowingly, intelligently, and voluntarily made because he did not adopt the factual basis for the plea. "An Alford plea is a guilty plea accompanied by a denial of the facts constituting the offense."¹⁰ As such, a defendant is not required to adopt the State's factual basis for the plea. However, before accepting an Alford plea, the district court must determine that the defendant understands the elements of the offense with which he is charged.¹¹ Here, Hodgkins signed a written plea agreement which set forth the elements of attempted murder with the use of a deadly weapon resulting in substantial bodily harm, and Hodgkins told the court that he understood the written plea agreement. As such, we conclude that the record as a whole indicates that Hodgkins was informed of the nature of the charge against him.¹² Thus, Hodgkins failed to meet his burden of demonstrating that his plea was not entered knowingly, intelligently, and voluntarily.

Third, Hodgkins claimed that the State breached the plea agreement when it provided the sentencing court with false and unsupported allegations. Hodgkins specifically argued that the State

¹⁰Tiger, 98 Nev. at 558, 654 P.2d at 1033.

¹¹Id.

¹²See Gomes, 112 Nev. at 1481, 930 P.2d at 706.

breached its agreement "to make no recommendation at rendition of sentence." However, our review of the sentencing transcript revealed that the State honored its agreement and did not make any recommendations to the sentencing court. As such, Hodgkins' claim is belied by the record and he is not entitled to relief.¹³

Fourth, Hodgkins claimed that his due process rights were violated when the victim referred to his prior acts in her victim impact statement. We note that this claim does not implicate the voluntary or knowing nature of Hodgkins' Alford plea and as such was not appropriately raised in a motion to withdraw a guilty plea. Moreover, we note that the claim lacks merit. Hodgkins' trial counsel objected to the victim's references to Hodgkins' prior bad acts. The district court sustained counsel's objections and stated that it would not consider Hodgkins' prior conviction. As such, we conclude that Hodgkins did not suffer a manifest injustice, and that the district court did not abuse its discretion in denying Hodgkins' motion.¹⁴

Fifth, Hodgkins claimed the district court erred when it informed him of the range of possible punishments during the plea canvass. To this end, Hodgkins specifically contended that the district court induced his plea by stating that it could give him probation, and then made it clear during sentencing that probation would not be

¹³See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

¹⁴See Sullivan v. State, 115 Nev. 383, 385 n.1, 990 P.2d 1258, 1259 n.1 (1999) (concluding on similar facts that a new sentencing hearing was not warranted).

considered. Our review of the record on appeal reveals that Hodgkins misconstrued the district court's statements. During the plea canvass, the district court informed Hodgkins of the range of punishments for attempted murder,¹⁵ noting that probation was available.¹⁶ At sentencing, the district court stated that "[p]robation isn't in this equation." The district court's statement did not mean that probation was legally unavailable, but rather that the district court had decided not to grant Hodgkins probation.¹⁷ Nothing in the record suggests that Hodgkins' will was overborne, that he was unable to weigh alternatives, or that the district court abdicated its duty as a "neutral arbiter of the criminal prosecution" during the plea canvass.¹⁸ As such, we conclude that Hodgkins' claim is without merit, Hodgkins did not suffer a manifest injustice, and the district court did not abuse its discretion in denying Hodgkins' motion.

¹⁵The district court asked Hodgkins:

And, you understand that, even under an Alford plea, I could give you probation, or I could give you the minimum, or I could give you the maximum allowable under law, I could sock you with 8 to 20 years in prison. Do you understand that?

¹⁶See NRS 176A.100.

¹⁷Id.

¹⁸See Standley v. Warden, 115 Nev. 333, 336-37, 990 P.2d 783, 785 (1999) quoting United States v. Bruce, 976 F.2d 552, 557 (9th Cir. 1992); Stocks v. Warden, 86 Nev. 758, 761, 476 P.2d 469, 471 (1970).

Finally, Hodgkins claimed that the district court breached the plea agreement when it stated the maximum punishment allowable under law was 8 to 20 years, yet sentenced Hodgkins to 130 to 480 months. Our review of the record on appeal reveals that Hodgkins misconstrued the district court's statement. During the plea canvass, the district court informed Hodgkins of the range of punishments for the primary offense of attempted murder resulting in substantial bodily harm. The district court did not address the deadly weapon enhancement.¹⁹ However, Hodgkins' written plea agreement did. In his plea agreement, Hodgkins stated,

I understand that as a consequence of my plea of guilty by way of the Alford decision the Court must sentence me to imprisonment in the Nevada State Prison for a minimum term of not less than two (2) years and a maximum term of not more than twenty (20) years for Attempt Murder, plus an additional consecutive term of not less than two (2) years and a maximum term of not more than twenty (20) years for Use of a Deadly Weapon.

Given that Hodgkins agreed to serve consecutive sentences for attempted murder with the use of a deadly weapon in his written plea agreement, and there is no conflict between the written plea agreement and the district court's plea canvass, we conclude that Hodgkins' claim as to the maximum punishment permitted by the plea agreement is belied by the record and that he is not entitled to relief.²⁰


¹⁹See NRS 193.165.


²⁰See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

In sum, Hodgkins failed to demonstrate that the district court erred in denying his motions for modification of sentence and withdrawal of his guilty plea. Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.²¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²²


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Edwin Hodgkins
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

²¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²²We have reviewed all documents that Hodgkins has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Hodgkins has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.