

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG LEONARD JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41359

FILED

MAY 12 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's motion to withdraw his guilty plea. Appellant was originally convicted pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance. The district court sentenced appellant to serve a prison term of life with parole eligibility in 10 years, and then suspended execution of the sentence and placed appellant on probation for a time period not to exceed 5 years. The judgment of conviction was entered on April 13, 1999.

On February 1, 2000, the Nevada Division of Parole and Probation filed a violation report against appellant, alleging he violated his probation by using controlled substances, possessing drug paraphernalia, and missing counseling sessions. After conducting a parole revocation hearing, the district court revoked appellant's probation.

On September 6, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus, alleging that his counsel was ineffective at the probation revocation hearing. After appointing

counsel and conducting an evidentiary hearing, the district court denied the petition. On appeal, this court affirmed the order of the district court.¹

On August 30, 2002, more than 3 years after his original conviction, appellant filed a proper person motion to withdraw his guilty plea. In the motion, appellant argued that he was not informed of the correct range of the possible sentence, and that if he had been, he would have insisted that the bargain be for the minimum sentence. He therefore argued that his plea was not voluntary. Appellant also requested the appointment of counsel. The State filed an opposition.

Without appointing counsel, the district court denied appellant's motion to withdraw his plea. Specifically, the district court concluded that appellant was not entitled to the appointment of counsel in a proceeding for post-conviction relief, and that his claim was both belied by the record and barred by the doctrine of laches.

Appellant first contends that the district court erred by refusing to appoint counsel to assist him with his motion to withdraw his plea. Appellant argues that he is entitled to counsel because a motion to withdraw a guilty plea is incident to the trial court proceedings.² However, an individual is entitled to legal counsel only during critical stages of a criminal prosecution.³ Appellant cites no authority, and makes no argument, for the proposition that a post-conviction motion to withdraw a guilty plea is a critical stage of a criminal prosecution.

¹Johnson v. State, Docket No. 38047 (Order of Affirmance, July 29, 2002).

²See Hart v. State, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000).

³Kirby v. Illinois, 406 U.S. 682, 690 (1972).

Appellant had no absolute right to counsel to assist him with his motion to withdraw his plea. We conclude that the district court did not err by denying appellant's motion to appoint counsel.

Appellant next contends that the district court erred by denying his motion without conducting an evidentiary hearing. "A defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record."⁴ Appellant's allegation that he did not understand the range of punishment is belied by the record. Specifically, the guilty plea memorandum properly set forth the range of punishment, and appellant was informed when he entered his plea that the minimum parole eligibility would be 10 years and the maximum term was life imprisonment. We therefore conclude that the district court did not err by refusing to conduct an evidentiary hearing.

We further conclude that the district court did not err by denying the motion. NRS 176.165 provides, in pertinent part, that a judgment of conviction may be set aside and the guilty plea withdrawn after sentencing "[t]o correct manifest injustice." Appellant has failed to demonstrate that his guilty plea resulted in a manifest injustice. Specifically, appellant was thoroughly canvassed at the entry of his plea, regarding the rights he was waiving by pleading guilty and the consequences of his plea. He informed the court that he was pleading guilty voluntarily, that he understood the nature of the charges against him, and that he was satisfied with his legal representation. Finally,


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

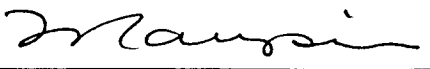
appellant waited 3 years after the judgment of conviction was entered before he moved to withdraw his plea.

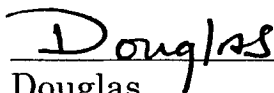
Moreover appellant has failed to meet his burden of showing that his guilty plea was not entered knowingly and voluntarily.⁵ Accordingly, we cannot conclude that the district court clearly abused its discretion in denying appellant's motion to withdraw his plea.⁶

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁵See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (a guilty plea is presumptively valid, and the defendant has the burden to establish that the plea was not entered knowingly and intelligently).

⁶See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) ("On appeal from a district court's denial of a motion to withdraw a guilty plea, this court '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.'" (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368)).

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk