IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL J. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41453

FILED

APR 0 8 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford plea,[1] of one count of sexual assault of a minor under the age of 16 years. The conviction stems from sexual conduct directed towards appellant Daniel J. Williams' 7-year-old daughter, and the initial criminal complaint charged Williams with one count each of sexual assault of a minor under the age of 14 years and lewdness with a minor under the age of 14 years. The district court sentenced Williams to serve a prison term of 5-20 years with a special sentence of lifetime supervision to commence upon his release from any term of parole or imprisonment, and ordered him to pay $1,050.00 in restitution.

Williams' sole contention is that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea. Citing to Mitchell v. State for support,[2] Williams argues that it was an

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

[2]109 Nev. 137, 848 P.2d 1060 (1993); see also Jezierski v. State, 107 Nev. 395, 812 P.2d 355 (1991).

04-06476

abuse of discretion to deny his motion to withdraw his guilty plea because "he denied having committ[ed] any crime, and there was no prejudice posed to the State because [he] made his motion to withdraw prior to sentencing." We disagree with Williams' contention.

"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.'"[3] In deciding whether a defendant has 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.[4] 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."[5] A defendant has no right, however, to withdraw his plea merely because he moves to do so prior to sentencing or because the State failed to establish actual prejudice.[6]

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an

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[3]Woods 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.

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

[5]Mitchell, 109 Nev. at 141, 848 P.2d at 1062.

[6]See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

intermediate order in the proceedings.[7] "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."[8]

We conclude that the district court did not abuse its discretion in denying Williams' presentence motion to withdraw his guilty plea. Notably, Williams never claimed to misunderstand the plea negotiations, and further, his reliance on Mitchell is misplaced because his claim of innocence is less than credible. In accepting an Alford plea, a district court must determine not only that there is a factual basis for the plea but 'must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.'"[9] An Alford plea is, by its nature, accompanied by a denial of the facts constituting the offense.[10] Here, the district court had more than an adequate factual basis to accept Williams' plea to sexual assault of a minor under the age of 16 years. Therefore, we conclude that the totality of the circumstances indicate that Williams failed to demonstrate that he had a fair and just reason to withdraw his plea.

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[7]NRS 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)).

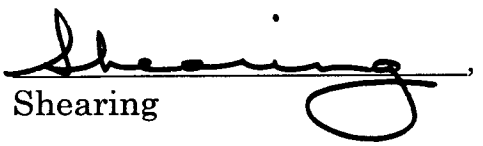
[8]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[9]State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996) (quoting Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982)).

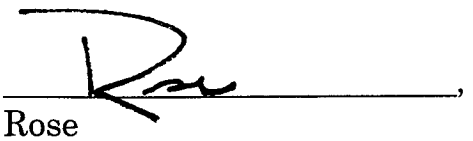
[10]Id. at 1479, 930 P.2d at 705.

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

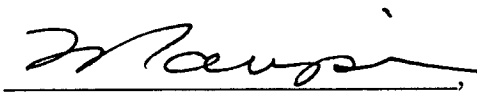
ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Shearing



_____, J.
Rose



_____, J.
Maupin

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