

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL W. KIDD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41502

FILED

JAN 30 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of assault with a deadly weapon. The district court sentenced appellant Michael W. Kidd to serve a prison term of 12-30 months.

First, Kidd contends that the district court erred in denying his presentence motion to withdraw his guilty plea. Kidd claims "jail records show [he] was not on psychotropic medication at the time of his plea but was (although there were numerous refusals) at the time of the motion to withdraw his plea." Kidd argues that he did not understand the terms of the negotiations, and in support of his motion, appended a report from a forensic examiner/clinical psychologist which stated that Kidd was "quite likely" not taking his medications at the time he entered his guilty plea and that "his decision to withdraw his original plea should be seen as having a greater weight, that is, represents a more valid decision-making process, than his initial plea before the Court." Kidd also claims that he is innocent and did not attempt to run over the victim with his vehicle. We disagree with Kidd's 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.'"¹ 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.² A defendant is competent to enter a plea if he has: (1) "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"; and (2) "a rational as well as factual understanding of the proceedings against him."³ 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."⁴

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.⁵ "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

¹Woods 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.

²See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

³Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

⁴Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁵NRS 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)).

determination absent a clear showing of an abuse of discretion.”⁶ Additionally, this court has stated that “the failure to utter talismanic phrases will not invalidate a plea where a totality of the circumstances demonstrates that the plea was freely, knowingly and voluntarily made.”⁷ If the motion to withdraw is based on a claim that the guilty plea was not entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.⁸

We conclude that the district court did not abuse its discretion in denying Kidd’s presentence motion to withdraw his guilty plea. The district court properly determined that Kidd did not substantiate his claim that his guilty plea was not voluntarily and knowingly entered. At the plea canvass, Kidd admitted to driving his vehicle in a manner to make the victim believe that he was trying to run him over. Kidd pleaded guilty with the understanding that he could withdraw his plea if the court did not give him probation. This conditional plea, however, also required that Kidd have no contact with the victim and that he stay out of trouble after his own recognizance release prior to sentencing. Kidd violated the terms of his conditional plea and release when he failed to appear in court for sentencing. Soon after, Kidd filed the instant motion to withdraw his guilty plea, which the State opposed.

In denying the motion, the district court stated that it had reviewed the report written by a clinical psychologist and submitted by

⁶Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁷State v. Freese, 116 Nev. 1097, 1104, 13 P.3d 442, 447 (2000) (citing Bryant, 102 Nev. at 271, 721 P.2d at 367).

⁸See Bryant, 102 Nev. at 272, 721 P.2d at 368.

Kidd. The district court stated that the report indicated that Kidd was competent to understand the nature of his offense, and that he was able to assist his counsel in furtherance of his defense. The district court also noted, and our review of the record reveals, that Kidd was thoroughly canvassed prior to the entry of his plea. Initially, Kidd was reluctant to admit to the facts of the offense, and the district court refused to accept his guilty plea. Two days later, Kidd returned to court prepared to enter his guilty plea. The transcript of Kidd's plea canvass further reveals that he had a rational and factual understanding of the proceedings below and was able to appropriately respond to the district court's questions. The coherent nature of Kidd's statements on the record belies his claim that he was incompetent to plead guilty because he was not taking his medication.

Additionally, in denying Kidd's motion to withdraw his plea, the district court noted that it reviewed the presentence investigation report (PSI) prepared by the Division of Parole and Probation, and that it supported the court's belief that Kidd entered his plea knowingly and intelligently. The district court stated:

You know, I've looked – in addition to all of that, he has numerous, numerous, numerous, numerous, numerous, numerous, numerous contacts with the law. This is not his first time here. This is not his first time to go forward with cases.

Our review of the PSI reveals that Kidd has an extensive violent and criminal history spanning approximately 16 years. The PSI lists 17 misdemeanor convictions, 3 felony convictions, and numerous arrests without disposition. Therefore, based on all of the above, we conclude that the district court properly reviewed the entire record and did not abuse its

discretion in denying Kidd's presentence motion to withdraw his guilty plea.

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

ORDER the judgment of conviction AFFIRMED.⁹

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.