

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JOHNSON, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41506

FILED

MAR 18 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 James Johnson, III's motion to withdraw his guilty plea.

On July 23, 2002, the district court convicted Johnson, pursuant to an Alford plea,¹ of two counts of attempted sexual assault on a minor under fourteen years of age. The district court sentenced Johnson to serve two concurrent terms of 96 to 240 months in the Nevada State Prison. Johnson did not appeal.

On April 23, 2003, Johnson filed a proper person motion to withdraw his guilty plea in the district court. The State opposed the motion. On June 3, 2003, the district court denied Johnson's motion. This appeal followed.

In his motion, Johnson contended that his guilty plea was not knowingly and voluntarily entered. A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not

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

entered knowingly and intelligently.² After the imposition of a sentence, the district court may allow the withdrawal of a guilty plea to correct a manifest injustice.³ This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁴ Further, in determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁵

Johnson first contended that his guilty plea was not knowing or voluntary because the structure of his possible sentence was not adequately explained to him. Attempted sexual assault on a minor under fourteen years of age carries a sentence of between two and twenty years imprisonment; Johnson believed that "he would be sentenced to a minimum of two years until he reached his first parole hearing and if rejected he could remain in prison for up to twenty years." Instead, Johnson was sentenced to two concurrent terms of eight to twenty years.

We conclude that under the totality of the circumstances, Johnson failed to establish that his guilty plea was not knowingly and voluntarily entered. A review of the record reveals that the signed guilty plea agreement stated that for each count of attempted sexual assault on a minor under fourteen, the district court must sentence Johnson to "a minimum term of not less than two (2) years and a maximum term of not

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

³See NRS 176.165.

⁴Hubbard, 110 Nev. at 675, 877 P.2d at 521.

⁵State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

more than twenty (20) years" in the Nevada State Prison. Further, during the plea canvass, the district court reiterated that Johnson "could be sentenced anywhere from two to 20 years in prison." Johnson stated that he understood his possible sentence, and additionally acknowledged that he had read and understood the guilty plea agreement prior to signing it. Johnson failed to demonstrate that he had an alternate and reasonable interpretation of the terms of the guilty plea agreement, which rendered his guilty plea involuntary and unknowing. Consequently, the district court did not err in denying this claim.

Johnson next claimed that his guilty plea was not knowing or voluntary because he did not have an understanding of the charges to which he was pleading guilty. Johnson argued that he never admitted to "attempted sexual assault" during the plea canvass. Instead, Johnson stated that he "engaged in consensual sexual conduct with minors."


A review of the record reveals that the signed guilty plea agreement, which Johnson acknowledged having read and understood, stated that he was pleading guilty to two counts of "attempt sexual assault with a minor under fourteen years of age." Further, a copy of the information was attached to the agreement, which contained specific facts concerning the charges. During the plea canvass, the court construed Johnson's plea as an Alford plea because he did not admit that the sexual conduct was against the victims' will.⁶ If the case went to trial, however, the State expected to show that Johnson did not have his victims' consent. Despite the fact that Johnson did not use the words "attempted sexual


⁶See Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982) (stating that "[a]n Alford plea is a guilty plea accompanied by a denial of the facts constituting the offense").


assault" when providing a factual basis for his plea during the oral canvass, he failed to demonstrate that his guilty plea was not entered knowingly and voluntarily under the totality of the circumstances.⁷ Therefore, the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Johnson is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁷See Bryant v. State, 102 Nev. at 271, 721 P.2d at 367 (stating that this court has never required the recitation of magic words, or "talismanic phrases," as long as the totality of the circumstances demonstrates that the plea was freely, knowingly and voluntarily made).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have reviewed all documents that Johnson 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 Johnson has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. John S. McGroarty, District Judge
James Johnson III
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk