

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILES MANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41667

FILED

JUN 03 2004

[Signature]
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of burglary, one count of first degree kidnapping with the use of a deadly weapon, three counts of robbery with the use of a deadly weapon, one count of murder with the use of a deadly weapon, one count of murder, one count of attempted murder with the use of a deadly weapon, three counts of attempted first degree kidnapping with the use of a deadly weapon, and one count of possession of stolen property. The district court sentenced appellant Giles Manley: (1) for burglary, to a prison term of 48 to 120 months; (2) for first degree kidnapping, to a prison term of life, with an equal and consecutive term for the use of a deadly weapon; (3) for each of the three counts of robbery, to a prison term of 72 to 180 months, with an equal and consecutive term for the use of a deadly weapon; (4) for murder with the use of a deadly weapon, to a prison term of life, with an equal and consecutive term for the use of a deadly weapon; (5) for murder, to a prison term of life; (6) for attempted murder, to a prison term of 96 to 240 months, with an equal and consecutive term for the use of a deadly weapon; (7) for each of three first degree kidnapping counts, to a prison term of 96 to 240 months, with an equal and consecutive term for the use of a deadly weapon; and (8) for

possession of stolen property, to a prison term of 48 to 120 months. All terms were imposed to run consecutively.

On July 1, 2002, Manley was arraigned on an amended indictment charging him with each of the above listed counts.¹ During the arraignment, the State filed a notice of intent to seek the death penalty. On January 22, 2003, the district court denied Manley's motions attacking the State's death penalty notice. Shortly thereafter, Manley entered into plea negotiations with the State. In exchange for Manley's agreement to plead guilty to each of the counts specified in the indictment, the State agreed not to seek the death penalty. The State conditioned its agreement on Manley receiving the maximum term for each count and all of the terms running consecutively. The district court conducted a plea canvass and accepted Manley's guilty plea. However, during the May 15, 2003, sentencing hearing, Manley made an oral proper person motion to withdraw his guilty plea. The district court denied the motion and sentenced Manley. On May 27, 2003, the district court entered a formal judgment of conviction. This appeal followed.

Manley claims that the district court erred in denying his presentence motion to withdraw his guilty plea. Specifically, Manley argues that the district court failed to ensure that his plea was entered voluntarily and knowingly, and that the district court should have inquired as to why Manley wanted to withdraw his plea.

"A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason'

¹A third amended indictment was filed on October 17, 2002.

if it is 'fair and just.'"² In considering 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."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 In reviewing 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.⁶ If the motion to withdraw is based on a claim that the guilty plea was not entered voluntarily, knowingly, and intelligently, the burden to substantiate the claim remains with the appellant.⁷

²Woods 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.

³Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

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)).

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

⁷See id.

The record before this court belies Manley's claim that the district court failed to ensure his plea was entered voluntarily and knowingly.⁸ In the written plea agreement, Manley acknowledged that he agreed to plead guilty, understood the consequences of his plea, understood the rights and privileges he waived by pleading guilty, and that he voluntarily signed the agreement after consulting with counsel. During the district court's plea canvass, Manley's trial counsel, Joseph Abood, discussed the sequence of events leading to Manley's decision to enter a plea agreement. Abood stated that he and co-counsel spoke extensively with Manley, shared his discovery with him, and answered his questions. Abood also stated that he had thoroughly reviewed the written plea agreement with Manley, explaining to Manley his rights, the possible penalties, and the specifics of each crime. Manley acknowledged that he read and understood the plea agreement, he went over the plea agreement with counsel, he understood the charges against him, and that he freely and voluntarily entered his guilty plea. Before accepting Manley's plea, the district court read each count on the amended indictment and Manley acknowledged that each count was correct. Based on the totality of the circumstances, we conclude that Manley's guilty plea agreement was entered voluntarily, knowingly, and intelligently.

Our review of the record on appeal reveals that Manley failed to meet his burden of providing a substantial reason for withdrawing his


⁸See Hargrove, 100 Nev. at 503, 686 P.2d at 225 (holding a defendant is not entitled to relief "on factual allegations belied or repelled by the record").

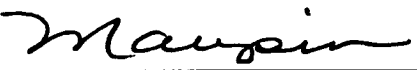
guilty plea.⁹ To the extent that the district court may have erred by failing to ask Manley why he wanted to withdraw his plea, we conclude that it was a harmless error given that Manley has also failed to provide his reasons to this court on appeal.


Manley also contends that he was denied effective assistance of counsel. To this end, Manley claims "counsel was ineffective and that he took the plea because of certain promises made by counsel," and that counsel was ineffective for taking away his "right to file a motion and set forth a record for appeal." However, claims of ineffective assistance of counsel may not be raised on direct appeal unless the claims have already been the subject of an evidentiary hearing.¹⁰

Having concluded that Manley has failed to demonstrate that the district court erred in denying his presentence motion to withdraw his guilty plea, and that his claim of ineffective assistance of counsel is not appropriate for review on direct appeal, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

⁹See Bryant, 102 Nev. at 272, 721 P.2d at 368.

¹⁰Feazell v. State, 111 Nev. 1446, 906 P.2d 727 (1995).

cc: Hon. Joseph T. Bonaventure, District Judge
Sciscento & Montgomery
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk