IN THE SUPREME COURT OF THE STATE OF NEVADA

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42344

FILED

MAY 10 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 a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced appellant Abdul Howard to serve two consecutive prison terms of 24 to 60 months, with equal and consecutive prison terms for the use of the deadly weapon. The district court ordered the sentence to run concurrently with the sentences imposed in district court case no. C189799 and a Florida case.

Howard first contends that the district court erred in denying his presentence motion to withdraw his guilty plea because the plea was not knowing and voluntary. Specifically, Howard contends that his plea was invalid because the record does not affirmatively show that he understood the elements of the crimes to which he pleaded guilty, nor did it affirmatively show that Howard understood the nature of the offenses. We conclude that Howard's contention lacks merit.

The district court has discretion to grant a defendant's presentence motion to withdraw a guilty plea for any substantial reason

that is fair and just.[1] "To determine whether the defendant advanced a substantial, fair, and just reason to withdraw a plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."[2] Part of this court's inquiry with regard to the constitutional validity of a guilty plea includes consideration of whether the record shows that a defendant "understood the elements of the offense to which the plea was entered or . . . made factual statements to the court which constitute[d] an admission to the offense pled to."[3] "[I]f the [district] court makes factual statements concerning the offense . . . that are sufficient to constitute an admission to the offense had they been made personally by the accused, then the accused may affirmatively adopt the court's factual statements as true, and thereby admit the offense by adoption."[4]

In this case, Howard acknowledged in the guilty plea agreement and at the plea canvass that he understood the elements of the charged offenses as set forth in the information. Additionally, the following colloquy occurred:

> District Court: It's my understanding, as to Count II, Mr. Howard on or about December 9, 2002, you

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[1]NRS 176.165; Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998).

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

[3]Hanley v. State, 97 Nev. 130, 135, 624 P.2d 1387, 1390 (1981), overruled on other grounds by Woods, 114 Nev. 468, 958 P.2d 91.

[4]Croft v. State, 99 Nev. 502, 505, 665 P.2d 248, 250 (1983).

> willfully, unlawfully, feloniously took personal property, lawful money of the United States from [the victim], in her presence, by means of force or fear of injury to and without her consent and against her will, and you used a deadly weapon, a firearm, during the commission of this crime; is that correct?
>
> Howard: Yes, sir.

A similar colloquy occurred with regard to the second count. Howard's claims regarding the validity of his guilty plea is therefore belied by the record because he both acknowledged that he understood the elements of the charged offenses and admitted that he committed them by affirmatively adopting the district court's factual summary. Accordingly, the district court did not abuse its discretion in rejecting Howard's claim.

Howard also contends that his guilty plea was not knowing because "the sole reason he accepted the negotiation was because his counsel advised him that district court case no. C189799 would be dismissed per the negotiations." We conclude that Howard's contention lacks merit.

In the proceedings below, neither the prosecutor nor the district court promised Howard that district court case no. C189799, in which Howard pleaded guilty to coercion, would be dismissed. In fact, the only reference to that unrelated case occurred just prior to the plea canvass when the following colloquy occurred:

> District Court: [A]nd then he's got a coercion case, right?
>
> District Attorney: Right. I think, though, that deal can't really bind ours. We are willing to go along with the spirit of that. In the sexual assault case they've indicated that would run concurrent.

District Court: That's in front of me too.

District Attorney: It is.

District Court: If I give him concurrent on that, he cleans everything up, does his eight years and he's out. That's what the intent of everything is?

District Attorney: Right.

According to the representations made on the record, the discussion about district court case no. C189799 involved the prosecutor's recommendation that the stipulated sentence imposed in this case would run concurrently to the sentence in that case. Although Howard claims that his counsel promised him that district court case no. C189799 would be dismissed, the "'mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.'"[5] Accordingly, the district court did not abuse its discretion in rejecting Howard's claim.

Finally, Howard raises several allegations with regard to the validity of his guilty plea and the effectiveness of his trial counsel in district court case no. C189799. We decline to consider Howard's contentions. We note that Howard does not allege, and the record does not indicate, that this was a package plea agreement or that district court case no. C189799 is otherwise related to the instant case. We therefore conclude that Howard's challenge to the validity of his conviction in district court case no. C189799 is outside the scope of this appeal. Howard

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[5]State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

may raise his challenge to the validity of that conviction by initiating a post-conviction proceeding in that district court case.[6]

Having considered Howard's contentions and concluded that they either lack merit or are outside the scope of this appeal, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Michael V. Cristalli
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

[6]See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).