

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DEWAYNE ARMSTRONG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42408

FILED

NOV 09 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 23, 2003, the district court convicted appellant Richard Armstrong, pursuant to a guilty plea, of one count of burglary, two counts of attempted murder with the use of a deadly weapon, two counts of first-degree murder with the use of a deadly weapon, and one count of battery with the use of a deadly weapon. The district court sentenced Armstrong to a prison term of 72 to 180 months for the burglary, two consecutive prison terms of 96 to 240 months for each count of attempted murder, two consecutive prison terms of life without the possibility of parole for each count of first-degree murder, and one prison term of 48 to 120 months for the battery. The district court imposed these prison terms to run consecutively.

During August 2003, Armstrong entered into plea negotiations with the State. In exchange for Armstrong's agreement to plead guilty to each count specified in the amended information, the State agreed not to

seek the death penalty. The State conditioned its agreement on Armstrong receiving the maximum prison term for each count and all of the terms running consecutively. The district court conducted a plea canvass and accepted Armstrong's guilty plea. However, on October 16, 2003, prior to sentencing, Armstrong moved to withdraw his guilty plea agreement. He claimed that he entered his plea "under some level of pressure or coercion through counsel." The district court denied the motion, sentenced Armstrong, and later entered a formal judgment of conviction. This appeal follows.

Armstrong claims that the district court erred in denying his presentence motion to withdraw his guilty plea. Specifically, Armstrong argues that the district court failed to heed the conflict of interest created when trial counsel advocated his motion, the necessity of appointing separate counsel to represent him in his motion, the possibility that he with the assistance of appropriate counsel might want to bring additional facts to the court's attention, and the need for an evidentiary hearing on the motion. We disagree.

"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.'"<sup>1</sup> In considering whether a defendant has "advanced a substantial, fair, and just reason to withdraw a [guilty] plea, the district

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<sup>1</sup>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.

court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."<sup>2</sup> 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."<sup>3</sup> "A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently."<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> If the motion to withdraw is based on a claim that the guilty plea was not

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<sup>2</sup>Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

<sup>3</sup>Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

<sup>4</sup>Crawford, 117 Nev. at 722, 30 P.3d at 1126.

<sup>5</sup>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)).

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

entered voluntarily, knowingly, and intelligently, the burden to substantiate the claim remains with the appellant.<sup>7</sup>

The record before this court supports the district court's determination that Armstrong entered his plea voluntarily. In the written plea agreement, Armstrong acknowledged that he agreed to plead guilty, understood the consequences of his plea, understood the rights and privileges he waived by pleading guilty, signed the agreement voluntarily after consulting with counsel, and was not acting under duress or coercion. During the district court's plea canvass, Armstrong stated that he read the amended information, that he understood the charges, and that his attorney had explained the charges and answered his questions. Armstrong acknowledged that his pleas of guilty were made freely and voluntarily. And Armstrong admitted that other than the State's agreement to withdraw its notice of intent to seek death, no threats or promises were made to cause him to plead guilty. We also note that Armstrong received a substantial benefit from the agreement—he was spared the possibility of a death sentence.

More importantly, however, our review of the record reveals that Armstrong did not provide any specific factual details in support of his claim and therefore he failed to meet his burden of substantiating the claim.<sup>8</sup> To the extent that the district court may have erred by failing to

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<sup>7</sup>See id.

<sup>8</sup>See id.

ask Armstrong to support his claim with factual details, we conclude it was a harmless error given that Armstrong has also failed to provide factual support for his claim to this court on appeal.

Having determined that Armstrong failed to meet his burden to substantiate his claim that the guilty plea was not entered voluntarily, we conclude that Armstrong has not overcome the presumption that the lower court correctly assessed the validity of his plea. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jackie Glass, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk