

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO S. CABRAL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42445

**FILED**

**AUG 23 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 felony escape/unauthorized absence from residential confinement. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Ricardo S. Cabral to serve a prison term of 12-30 months to run consecutively to the sentence he is already serving.

Initially, we note that Cabral has not provided this court with any relevant legal authority or cogent argument in support of his claims on appeal. In fact, the fast track statement submitted by counsel is bereft of any citation to case law, and the bare allegations contained therein are entirely lacking in the requisite factual specificity. This court has repeatedly stated that “[i]t is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”<sup>1</sup> Nevertheless, we have reviewed Cabral’s arguments and concluded that they are without merit.

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<sup>1</sup>Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

First, Cabral contends that the district court erred in denying his presentence motion to withdraw his guilty plea. Without explanation or support, the extent of Cabral's argument on appeal is that he "was on several anxiety medications at the time his plea was entered, and his mental health issues prevented him from voluntarily and knowingly entering his plea." We conclude that Cabral's contention is without merit.

"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>2</sup> 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.<sup>3</sup> 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."<sup>4</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>5</sup> A defendant has no

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<sup>2</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.

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

<sup>4</sup>Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

<sup>5</sup>Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

right, however, to withdraw his plea merely because he moves to do so prior to sentencing or because the State failed to establish actual prejudice.<sup>6</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>7</sup> “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 determination absent a clear showing of an abuse of discretion.”<sup>8</sup> 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.<sup>9</sup>

We conclude that the district court did not abuse its discretion in denying Cabral’s presentence motion to withdraw his guilty plea. The district court properly determined that Cabral did not substantiate his claim that his guilty plea was not voluntarily and knowingly entered. Both in the proceedings below and on appeal, Cabral failed to articulate with any specificity how his anxiety medications prevented him from

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<sup>6</sup>See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

<sup>7</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>8</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

<sup>9</sup>See id.

entering a voluntary and knowing guilty plea. In denying Cabral's motion, the district court stated:

THE COURT: I'm going to deny the defendant's motion as the defendant has never once raised this issue in all [of] his conversations with his counsel and any of the times before either [in] this Court or the Justice Court. And the monitoring physician lists no problems with the defendant's ability to understand what is going on. In fact, the notes show that his meds were improving the defendant's mental issues.

Accordingly, we conclude that Cabral has failed to meet his burden and demonstrate that his guilty plea was entered involuntarily or unknowingly.

Second, Cabral contends that the district court abused its discretion at sentencing. Cabral argues that the sentence imposed is excessive and harsh and amounts to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. We disagree with Cabral's contention.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.<sup>10</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>11</sup> The district court's discretion,

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<sup>10</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>11</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

however, is not limitless.<sup>12</sup> Nevertheless, we will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.”<sup>13</sup> Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.<sup>14</sup>

In the instant case, Cabral does not allege that the district court relied on impalpable or highly suspect evidence, or argue that the relevant sentencing statutes are unconstitutional. In fact, Cabral concedes that the sentence imposed was within the parameters provided by the relevant statutes.<sup>15</sup> Additionally, we note that Cabral received a substantial benefit by pleading guilty – in exchange for his guilty plea, the State agreed to request the minimum sentence, and the district court ultimately imposed the parties’ sentence stipulation. Therefore, we conclude that the district court did not abuse its discretion at sentencing, and that the sentence imposed is not excessive or harsh.

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<sup>12</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

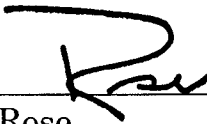
<sup>13</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


<sup>14</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).


<sup>15</sup>See NRS 212.090(1)(b) (category B felony providing for a sentence of 1-10 years); NRS 213.400(1).

Having considered Cabral's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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