

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT HENRY PINDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42595

FILED

AUG 26 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford plea,¹ of one count each of second-degree murder and discharging a firearm at or into a vehicle. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Vincent Henry Pinder to serve concurrent prison terms of 10-25 years and 12-36 months to run consecutively to the two concurrent prison terms already imposed pursuant to an earlier jury verdict and conviction of two counts of felony escape in the same case.

Pinder's sole contention is that the district court erred in denying his presentence motion to withdraw his Alford plea. Pinder argues that his plea was not knowingly and voluntarily entered because he only had a "brief opportunity" to read and review the plea agreement, and therefore, he did not understand the terms of the negotiations. We conclude that Pinder'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'

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

if it is 'fair and just.'"² 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."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 A defendant has no 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.⁵

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.⁶ "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

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, 721-22, 30 P.3d 1123, 1125-26 (2001).

⁴Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁵See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

⁶NRS 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)).

determination absent a clear showing of an abuse of discretion.”⁷ 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.⁸

We conclude that the district court did not abuse its discretion in denying Pinder’s presentence motion to withdraw his guilty plea. The district court properly determined that Pinder did not substantiate his claim that his guilty plea was not voluntarily and knowingly entered. During the plea canvass, the following exchange took place:

THE COURT: Mr. Pinder, are your pleas freely and voluntarily entered into?

DEFENDANT: Yes, Your Honor.

THE COURT: Did Mr. Savage [defense counsel] or anybody threaten you?

DEFENDANT: No, Your Honor.

....

THE COURT: Did you have a chance to read the plea agreement?

DEFENDANT: Very briefly, Your Honor.

THE COURT: Okay. Let me have Mr. Savage state the negotiations for the record. What are the negotiations on this?

⁷Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁸See id.

At that point, defense counsel thoroughly and accurately detailed the terms of the negotiations, including the stipulated sentence, and concluded as follows:

DEFENSE COUNSEL: And also, Mr. Pinder wants to make sure and make it clear that originally when this case was brought before this Court the defense filed a motion to sever an ex-felon in possession of a firearm count, which is still in the system, that as part of these negotiations the State is agreeing not to proceed and to dismiss the count of ex-felon in possession of a firearm.

THE STATE: That's correct, Your Honor.

THE COURT: And do you accept those negotiations, Mr. Pinder?

DEFENDANT: Yes, Your Honor.


THE COURT: Now, aside from those negotiations, anybody make any other promises to get you to plead guilty?

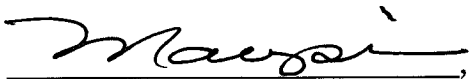
DEFENDANT: No, Your Honor.

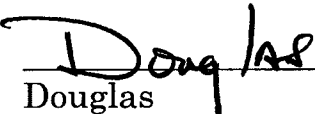
In denying Pinder's oral motion to withdraw his plea, the district court found that Pinder entered his plea knowingly, voluntarily, and willingly. Our review of the record on appeal reveals that Pinder was thoroughly canvassed prior to the entry of his plea, and that he understood the consequences of his plea as explained to him in open court. Moreover, it is clear from defense counsel's unrefuted statement above that Pinder understood and was involved in the negotiations, and that he made sure that counsel stated for the record that as part of the agreement the State agreed to dismiss the charge of being an ex-felon in possession of a firearm.

Accordingly, having considered Pinder's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Michael A. Cherry, 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