

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENE ANTHONY ALLEN A/K/A  
ABDULIA USEF ALI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41274

FILED

MAR 11 2004

*[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of sexual assault on a minor under 16 years of age and lewdness with a minor under 14 years of age. The district court sentenced appellant Gene Anthony Allen to serve a prison term of 5 to 20 years for the sexual assault count and a concurrent prison term of life with parole eligibility in 10 years for the lewdness count.

On August 30, 2001, Allen was charged with 16 counts of sexual assault on a minor under 14 years of age and 3 counts of lewdness with minor under 14 years of age for molesting his stepdaughter on numerous occasions. The sexual assaults began when the victim was 8 years old and continued until the victim was 11 years old, when she relocated out-of-state to live with relatives.

Prior to trial, the State filed a motion to admit evidence of Allen's prior bad acts involving fondling young female minors, including one incident which resulted in a criminal conviction. The district court granted the motion. In addition to the prior bad act evidence, the State intended to present testimony of the victim, as well as physical evidence that the victim had been sexual assaulted. At the end of the first day of trial, Allen and the State negotiated a conditional plea with a stipulated

sentencing recommendation. Pursuant to the terms of the plea agreement, Allen would plead guilty to one count each of sexual assault on a minor under 16 years of age and lewdness with a minor under 14 years of age, and the parties would stipulate that Allen would receive concurrent prison terms of 5 to 20 years and life with parole eligibility in 10 years. After thoroughly canvassing Allen, the district court accepted Allen's conditional guilty plea.

Prior to sentencing, however, Allen filed a proper person motion to represent himself and a proper person motion to withdraw the guilty plea. The district court allowed Allen to represent himself and appointed stand-by counsel. Without conducting an evidentiary hearing, the district court denied Allen's motion to withdraw the guilty plea. On appeal, Allen, now represented by counsel, contends that the district court erred in denying his presentence motion to withdraw his guilty plea because his guilty plea was not knowing. In particular, Allen contends that his guilty plea was not knowing and voluntary because he was not "wholly aware of [the terms of the agreement] into which he was entering," and his trial counsel coerced him into pleading guilty. In support of his contention, Allen notes that he entered a guilty plea at the end of a long day of trial and, during the course of the plea canvass, either the district court or trial counsel had to explain the terms of the agreement to Allen because there were some "discrepancies in communication." We conclude that the district court did not abuse its discretion in denying Allen's motion to withdraw the guilty plea.

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.<sup>1</sup> "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."<sup>2</sup>

The totality of the circumstances in this case indicate that Allen's guilty plea was knowing, voluntary and intelligent. Allen signed a written plea agreement and was thoroughly canvassed by the district court. Although, during the course of the plea canvass, Allen asked questions on several issues, including eligibility for probation, presentence incarceration credit and the conditional nature of his plea, Allen's questions were correctly answered by either the district court or trial counsel. Moreover, Allen's claim that his trial counsel coerced his guilty plea is belied by the record; at the plea canvass and in the signed plea agreement, Allen acknowledged that he was pleading guilty because he believed it was in his best interest and also acknowledged that he was not acting under duress or coercion. Finally, we note that Allen received a substantial benefit in exchange for his guilty plea in that he avoided numerous additional charges and the possibility of a significantly longer prison term. Accordingly, the district court did not abuse its discretion in refusing to grant Allen's presentence motion to withdraw.

Allen also contends that his guilty plea was invalid because it was the product of ineffective assistance of counsel. In particular, Allen

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<sup>1</sup>NRS 176.165; Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998).

<sup>2</sup>Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

contends that he misunderstood the State's evidence against him due to trial counsel's failure to conduct an adequate investigation, namely, reviewing the discovery in his case and investigating the victim's "propensity for truthfulness."<sup>3</sup> We conclude that the district court did not abuse its discretion in dismissing Allen's claim involving trial counsel's investigation without conducting an evidentiary hearing.

The record on appeal indicates that defense counsel filed numerous pretrial motions and, in the pretrial proceedings, advocated zealously on behalf of Allen. Moreover, Allen's claim that he was dissatisfied with his trial counsel is belied by the record; in the signed plea agreement, Allen acknowledged that he was "satisfied with the services provided by [his] attorney" and that a "trial would be contrary to [his] best interest." Finally, we note that Allen's claim regarding trial counsel's deficient investigation fails for lack of specificity in that Allen did not identify the exculpatory evidence or evidence impugning the victim's credibility, that trial counsel would have uncovered with further investigation. Accordingly, the district court did not err in rejecting Allen's claims of ineffective assistance of counsel because Allen failed to


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<sup>3</sup>Allen also argues that his trial counsel was ineffective in failing to inform him that the dismissed counts could be used against him at the sentencing proceeding. We conclude that Allen has failed to show that trial counsel was ineffective in this regard and note that, because there was a conditional guilty plea based on a stipulated sentence, the prosecutor did not present any argument at the sentencing hearing, and did not reference the dismissed counts whatsoever.


show that he would not have pleaded guilty but for trial counsel's inadequate investigation.<sup>4</sup>

Having considered Allen's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. John S. McGroarty, District Judge  
William J. Taylor  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).