

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUHJUAN WASHINGTON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 83275

RESPONDENT'S ANSWERING BRIEF

**Appeal From Denial of a Motion
to Withdraw Guilty Plea (Post-Conviction)
Eighth Judicial District Court, Clark County**

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Eighth Judicial District court, Clark County**

ROUTING STATEMENT

Pursuant to NRAP 17(b)(1), this case is presumptively assigned to the Court of Appeals, as it is an appeal from a judgment of conviction based upon a plea of guilty.

STATEMENT OF THE ISSUE(S)

1. Whether Washington waived the issues raised on appeal by failing to present them to the district court
2. Whether the district court erred in denying Washington’s Motion to Withdraw a Guilty Plea Agreement in finding there was no ‘fair and just reason’ to support withdrawal of Washington’s Guilty Plea Agreement
3. Whether the Guilty Plea Agreement filing date is relevant to a Motion to Withdraw Guilty Plea
4. Whether the district court erred in hearing Washington’s motions in a particular order

STATEMENT OF THE CASE

On August 1, 2018, Juhjuan Washington (hereinafter “Washington”) was charged with assault with a deadly weapon, attempt robbery with use of a deadly weapon, first degree kidnapping with use of a deadly weapon, open or gross lewdness, burglary while in possession of a firearm, coercion with use of a deadly weapon, robbery with use of a deadly weapon, grand larceny auto, and attempt destruction of evidence. On March 25, 2021, Washington was canvassed and pled guilty to second degree kidnapping, robbery with use of a deadly weapon, attempt sexual assault, and open and gross lewdness.

On May 10, 2021, Washington filed a Motion to Withdraw Guilty Plea. On June 10, 2021, there was a hearing, counsel argued, and Washington made a statement. Ultimately, the district court denied Washington’s motion. On June 22, 2021, Washington was sentenced. On July 21, 2021, Washington filed a Notice of Appeal and Washington’s Judgment of Conviction was filed on June 25, 2021.

On November 15, 2021, Washington filed an Opening Brief (hereinafter “AOB”). The State responds as follows.

STATEMENT OF THE FACTS

Between October 7, 2017, and October 22, 2017, Washington terrorized the UNLV community. The Presentence Investigation Report (hereafter “PSI”) prepared April 19, 2021, states:

On October 20, 2017, officers were dispatched in reference to victim #1 who was held at gunpoint by the defendant, later identified as Juhjuan Washington. Victim #1 provided a description of the defendant and stated she took the firearm from the defendant.

On arrival, officers met with victim #1. She stated that while in a parking garage, the defendant pointed a handgun at her and told her to enter her vehicle. Victim #1 was told to drive to a community center parking lot. During the drive, the defendant stated he had a "foot fetish" and he held the firearm towards victim #1's chest. In the parking lot, the defendant ordered victim #1 to remove her socks and sandals revealing her bare feet. He had her face the driver's side door with her exposed feet in the defendant's lap. The defendant asked if victim #1 knew what a "foot job" was, and she responded with no. The defendant removed his pants and underwear exposing his penis and began to stroke his penis on victim #1's feet. In fear, victim #1 complied with the defendant's orders. She saw numerous children walk past the car and the defendant would hide. Victim #1 was made to continue masturbating the defendant. At one point the defendant took victim #1's cell phone to film the act. The assault continued until victim #1 felt something wet on her feet.

The defendant told victim #1 to drive to another location. She parked at an apartment complex and the defendant had victim #1 continue the foot job. At one point, the defendant asked victim #1 for a "blow job" which she refused. The defendant made victim #1 continue to masturbate him with her feet until he ejaculated on the bottom of her feet. The ejaculate covered victim #1's feet, toes, passenger seat, and defendant's thigh. During the assault, the defendant kept the handgun in his sweatshirt pocket. The defendant got dressed and removed the handgun and placed it at his thigh. Victim #1 grabbed the handgun and her cell phone and told the defendant to leave her car. She chased the defendant a short time but waited for the police. Officers located the handgun in victim #1's vehicle.

The victim was transported to a hospital and an examination was conducted. A positive reaction for semen was located on victim #1's right foot. Victim #1's cell phone was viewed by officers and the video depicted the defendant with his exposed penis being masturbated by victim #1's feet. During the video, the defendant is heard telling victim #1 what to do. The video also showed the defendant ejaculating on the victim's feet.

Surveillance video from the parking garage was viewed. It depicted the defendant entering the garage. The defendant matched the description proved by victim #1. Images of the defendant were released to the media.

On October 21, 2017, a witness who saw the news identified the defendant to officers as the one involved in the assault. The witness also verified that the defendant was given a firearm. A photo lineup was conducted with victim #1 and she positively identified the defendant as the one who committed the assault.

It was also learned that the defendant was involved in another assault which occurred on October 19, 2017. Victim #2 was leaving her

apartment when she was approached by the defendant. The defendant pointed a handgun at her and got into her vehicle. Victim #2 was told to drive and when she asked what he wanted the defendant stated, "I'll tell you what I want, just keep driving or I'll pull the trigger and blow your fucking brains out!" The defendant ordered victim #2 out of the car and he fled the area in victim #2's car. The car was later recovered by police. Fingerprints were obtained from victim #2's vehicle and a match to the defendant was returned. Video surveillance was obtained from the surrounding business where victim #2's car was located and showed the defendant walking away from the vehicle. On October 22, 2017, a photo line-up was conducted with victim #2 and she positively identified the defendant as the one that stole her vehicle.

On October 22, 2017, officer observed the defendant arriving at a residence in another stolen vehicle. The defendant was detained and taken for an interview. During the interview, the defendant admitted to kidnapping victim #1 and taking victim #2's vehicle.

PSI at 5-6.¹

SUMMARY OF THE ARGUMENT

Washington has not demonstrated that he is entitled to relief on his claims. First, as Washington failed to present his arguments to the district court and failed to object to the order in which they were heard, Washington's arguments are waived. Second, the district court properly denied Washington's Motion to Withdraw Guilty Plea as the record establishes the settlement conference did not amount to undue coercion, and there was no indication that time constraints and pressure from interested parties prevented Washington from making a voluntary and intelligent choice among available options.

Third, the district court properly denied Washington's Motion to Withdraw Guilty Plea because Washington failed to support his arguments with legal authority

¹ Contemporaneously, the States filed a Motion to Transmit Presentence Investigation Report.

as a Guilty Plea Agreement (hereinafter “GPA”), filed or not, is never binding on the Court. Finally, the district court properly denied Washington’s Motion to Withdraw Guilty Plea and Motion to Dismiss Counsel because the district court was not required to determine motions in any particular order, nothing in either motion related to the other, Washington failed to object to the order which the motions were heard, and no conflict existed for his counsel.

ARGUMENT

I. WASHINGTON WAIVED THE ISSUES RAISED ON APPEAL BECAUSE HE FAILED TO PRESENT THEM TO THE DISTRICT COURT

“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.” Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). In the instant case, Washington argues that the district court erred first because his GPA was not valid until filed, and second because the district court heard his Motion to Withdraw Guilty Plea before his Motion to Dismiss Counsel, which caused a conflict for his attorney. To Washington’s first argument, Washington failed to argue the validity of his GPA was affected by the filing date within his Motion to Withdraw Guilty Plea, thereby waiving the issue he raises on appeal.

To Washington's second argument, Washington failed to object to the order which the Court heard his motions. During the hearing on June 10, 2021, the Court inquired when Washington wanted to advance his Motion to Dismiss Counsel:

THE COURT: Okay. All right. Thank you. All right. This appears to be Defendant's motion to withdraw guilty plea. I also see there is a future setting for a Defendant's motion to dismiss counsel and appoint alternate counsel. The -- at this time, we'll be -- I'll be making a determination as to the motion to withdraw plea. And I will note that sentencing is set for June 22nd. So, Counsel, first from a housekeeping perspective, do you wish to advance the Defendant's motion to dismiss counsel prior to the sentencing?

MR. BOLEY: I know he filed it without me, of course, so I'm not sure. Whatever the Court would prefer, I guess.

2 AA 363. Washington's counsel represented that they had no preference regarding the order in which the Court addressed Washington's motions. Washington was present and failed to object to the order which the Court addressed his motions. Because Washington failed to present his arguments to the district court and failed to object to the order in which they were heard, Washington's arguments are waived, and this Court should not consider the merits of Washington's belatedly raised contentions on this issue.

II. THE DISTRICT COURT DID NOT ERR IN DENYING WASHINGTON'S MOTION TO WITHDRAW GUILTY PLEA

A. The District Court Did Not Err in Finding There Was No 'Fair and Just Reason' to Support Withdrawal of Washington's Guilty Plea

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. 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)). A plea of guilty is presumptively valid and the burden is on a defendant to show that the plea was not voluntarily entered. Byrant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). “On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 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.” Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

A plea of guilty is presumptively valid. Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Indeed, entry of a guilty plea is a solemn act that is not lightly accepted. Stevenson v. State, 131 Nev. 598, 605, 354 P.3d 1277, 1282 (2015) (citing United States v. Ensminger, 567 F.3d 587, 592–93 (9th Cir. 2009)). Nonetheless, a defendant may move to withdraw a guilty plea before sentencing for any substantial reason that is fair and just. See State v. Bernardelli, 85 Nev. 381, 385 (1969); NRS 176.165. It was within the district court’s discretion to determine whether permitting withdrawal of the guilty plea would be fair and just after considering the totality of the circumstances. See Stevenson v. State, 131 Nev. 598 (2015).

When determining whether a defendant has shown such a substantial reason that it is fair and just to allow the privilege of withdrawing the guilty plea, the Court looks at the totality of the circumstances, including whether the plea was entered knowingly and voluntarily. Id. Although a defendant may withdraw his plea for a substantial reason that is fair and just, “[o]nce the plea is accepted, permitting withdrawal is, as it ought to be, the exception, not an automatic right.” Ensminger, 567 F.3d at 593.

Here, Washington claims the district court erred in denying his Motion to Withdraw Guilty Plea. In Washington’s Motion to Withdraw Guilty Plea, he based this assertion on his supposed mental incompetency, and that the settlement conference was somehow coercive. 2 AA 321. His reply was basically the same. 2 AA 351-355. However, Washington asserted that he was not coerced during his plea canvass. 2 AA 304-318. Later, during the June 10, 2021 hearing, Washington claimed he lied to the court. 2 AA 372. Washington argued that he “felt pressured, you know, into signing this deal, so it was either go to trial and be convicted of 24 counts or settle and sign a deal.” Id. However, the choice between pleading guilty and proceeding to trial is present in every case and is not undue coercion. Stevenson v. State, 2015, 354 P.3d 1277, 131 Nev. 598.

Washington twice represented that he was not coerced into accepting a guilty plea. First during his plea canvass and second during his settlement conference.

During his plea canvass, Washington asserted that he was not coerced. 2 AA 304-318.

COURT: Do you understand that those are the charges that you're facing?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Are you making this plea freely and voluntarily?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Has anyone forced or threatened you or anyone close to you to get you to enter the plea?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. Did anyone, including the settlement judge that assisted you this morning, coerce or force you to accept this negotiation?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone made you a promise other than what's contained in the guilty plea agreement to get you to enter the plea?

THE DEFENDANT: No, Your Honor.

Id. at 309-311.

During the settlement conference, the Defendant and the State went back and forth several times discussing offers. Id. at 304-318. Terms of years were discussed, ranges were discussed, and ultimately a decision was made to accept the offer when the State agreed to a potential bottom of 3 years. Id. Indeed, Washington and the State went back forth on whether to name a potential victim—with the State ultimately agreeing to the Defendant's request. Id. One cannot be coerced into a plea that he bargained for himself. Thus, the settlement conference did not amount to undue coercion, and there was no indication that time constraints and pressure from interested parties, which are factors present in every case, prevented Washington from making a voluntary and intelligent choice among available options. Id.

Lastly, the procedural history also supports that Washington was not coerced into accepting negotiations. This matter was not resolved at a calendar call with the State threatening to “pull the deal.” This matter was not resolved at the start of a trial with the jury outside. This matter was resolved during a settlement conference that was agreed to by Washington. During the conference, the State agreed to several Washington’s demands. There was a “meeting of the minds” between the two parties that ultimately resulted in a deal. This was not the State taking advantage of a defendant with threats and mind games. This was buyer’s remorse. Clearly, there was no coercion under the totality of the circumstances. Therefore, the district court properly denied Washington’s Motion to Withdraw Guilty Plea and Motion to Dismiss Counsel.

B. Whether the GPA was Filed or Not is Irrelevant to a Motion to Withdraw Guilty Plea

Only issues relating to validity of plea are pertinent to a motion to withdraw plea. Hart v. State, 116 Nev. 558, 563-64, 1 P.3d (2000). Here, Washington claims the district court erred by denying his Motion to Withdraw Guilty Plea because the GPA had not been filed when Washington sought to withdraw the plea. Washington not only fails to support his argument with legal authority but admits that no legal authority exists supporting his assertion. AOB at 14. The failure to support an argument with relevant authority is fatal and it is not the responsibility of the State to develop legal arguments for the Washington to respond to them. See Edwards v.

Emperor's Garden Rest., 122 Nev. 317, 330, n. 38 (2006) (court need not consider claims unsupported by relevant authority); Maresca v. State, 103 Nev. 669, 673 (1987) (noting that issues not adequately presented need not be addressed). As such, this claim should be denied on this basis alone.

A guilty plea is an agreement between the parties, not an order or ruling of the court, so Bradley and the other cited case law are irrelevant. In fact, a GPA, whether filed or not, is *never* binding on the Court, which can accept the negotiations of the parties or take any other action legally available, including sentence the defendant to a different amount of time or reject the plea outright. While the Court *could* decide to let a defendant withdraw his plea for any fair and just reason under Stevenson – and in that sense “reconsider” the plea canvass and acceptance of the plea, Washington failed to provide a fair and just reason why his Motion to Withdraw Guilty Plea should have been granted, for reasons stated *supra*. Stevenson v. State, 2015, 354 P.3d 1277, 131 Nev. 598. Thus, as Washington fails to support his arguments with legal authority and as a GPA, filed or not, is never binding on the Court, the district court properly denied Washington’s Motion to Withdraw Guilty Plea and Motion to Dismiss Counsel.

C. District Court was Not Required to Determine Motions in Any Particular Order, and Nothing in the Motion to Dismiss Counsel Related to Washington’s Motion to Withdraw Guilty Plea

A defendant's failure to object to an issue at trial generally precludes appellate review of that issue unless there is plain error. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). Under plain error review, the asserted error must affect the petitioner's substantial rights, and “the burden is on the defendant to show actual prejudice or a miscarriage of justice.” Id. Additionally, the burden is on a defendant to show actual prejudice or a miscarriage of justice. Id. The Nevada Supreme Court has explained that the plain error doctrine is limited to situations “where the errors worked to a defendant’s actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” Bejarano v. State, 122 Nev. 1066, 1072, 146 P.3d 265, 270 (2006) (citing United States v. Fady, 456 U.S. 152, 170, 102 S.Ct. 1584 71 L.Ed.2d 816 (1982)).

As Washington failed to object to the order which the Court addressed his motions, as discussed *supra*, his argument is waived or at most reviewed for plain error on appeal. However, Washington also fails to meet his burden under plain error because the district court was not required to determine motions in any particular order and nothing in either motion related to the other.

Washington’s Motion to Dismiss Counsel was a pro per filing which provided no details about why counsel should be removed. 2 AA 356-359. Washington only made a conclusory argument that his counsel violated Nevada Rules of Professional Conduct 1.1, 1.4, 8.4, and 1.16; none of which had anything to do with his Motion

to Withdraw Guilty Plea. Id. As there was nothing within Washington's Motion to Dismiss Counsel that concerned his Motion to Withdraw Guilty Plea, there was nothing for the district court to "consider" prior to deciding his Motion to Withdraw Guilty Plea.

Additionally, Washington admits that his Motion to Withdraw Guilty Plea did not include an argument of ineffective counsel. AOB at 22. Accordingly, the district court was not provided Washington's argument of ineffectiveness of counsel in relation to his Motion to Withdraw Guilty Plea. Further, as discussed *supra*, Washington failed to object to the order which his motions were heard. Thus, the district court would have had no reason to believe Washington's motions were related in any way prior to the hearing.

Washington also argues that a conflict arose when his counsel argued Washington's Motion to Withdraw Guilty Plea, relying on United States v. Del Muro, 87 F.3d 1078 (9th Cir. 1996). Washington's reliance on the Ninth Circuit case, is misplaced because it is not precedential. Id. Distinguishing from Del Muro, where the court found a conflict arose when counsel was forced to argue his own ineffectiveness. Here, Washington's counsel never argued he was ineffective. Id. Washington admits this, stating that his counsel "did not allege his own ineffectiveness as a basis for withdrawing Washington's plea, nor was there any finding of such". AOB at 21. Rather, Washington's counsel claimed that his

assessment of Washington's mental state during the settlement hearing may not have been accurate due to circumstances outside of his control. 2 AA 370. Therefore, the holding in Del Muro does not apply to this case because Washington's counsel did not argue his own ineffectiveness.

As the district court was not required to determine motions in any particular order, nothing in either motion related to the other, Washington failed to object to the order which the motions were heard, and no conflict existed for his counsel, the district court properly denied Washington's Motion to Withdraw Guilty Plea and Motion to Dismiss Counsel.

CONCLUSION

Based on the above reasons, the State respectfully requests that this Court AFFIRM the district court's denial of Washington's Motion to Withdraw Guilty Plea and Motion to Dismiss Counsel (Post-Conviction).

Dated this 15th day of December, 2021.

Respectfully submitted,

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BY */s/ John Afshar*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 3,524 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 15th day of December, 2021.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 15, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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