

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST JORD GUARDADO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44334

**FILED**

JUN 02 2005

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 two counts of burglary, one count of first degree arson, and three counts of possession of stolen property. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant: (1) for each count of burglary, to a prison term of 48 to 120 months; (2) for arson, to a prison term of 72 to 180 months; and (3) for each count of possession of stolen property, to a prison term of 24 to 60 months. The district court ordered all sentences to run consecutively.

Appellant contends that the district court erred by denying his pre-sentencing motion to withdraw his guilty plea. Specifically, appellant argues that he had changed his mind about pleading guilty, and that he thought that the guilty plea agreement allowed him to withdraw his guilty plea at any time for any reason.

Appellant based his motion on language in the plea agreement that stated: "I further understand and agree that by the execution of this agreement, I am waiving any right I may have to remand this matter to Justice Court should I later withdraw my plea."

"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 court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."<sup>2</sup>

During the plea canvass in the instant case, appellant informed the district court that he had read and understood the plea agreement, and that he had signed the plea agreement. Appellant further informed the district court at the canvass that he believed he had had adequate time to confer with his attorney and discuss all legal and factual issues. We note that appellant also received a substantial benefit by entering into the plea agreement, in that the State agreed to dismiss two charges against appellant and not to seek adjudication as a habitual criminal.

When appellant asked to withdraw his plea, he did not offer any reason other than that he had changed his mind. As noted by the district court, the language in the plea agreement on which appellant relies does not guarantee that he will be able to withdraw his plea at any time. We conclude that appellant's mere subjective belief about the language in the plea agreement, standing alone, does not constitute a substantial, fair and just reason to withdraw his plea.

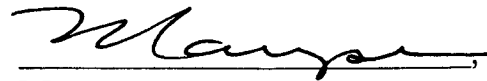
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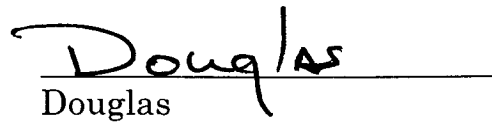
<sup>1</sup>Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

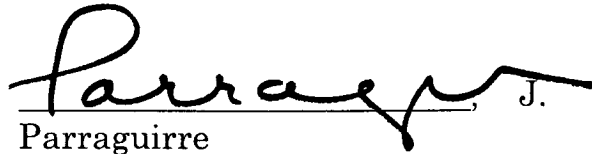
<sup>2</sup>Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

Based on the totality of the circumstances, we conclude that the district court correctly found that appellant's plea was validly entered.<sup>3</sup> Accordingly, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Maupin

 J.  
Douglas

 J.  
Parraguirre

cc: Hon. Brent T. Adams, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>3</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (holding that this court presumes that the lower court correctly assessed the validity of the plea, and that the lower court's determination will not be overturned absent a clear showing of an abuse of discretion).