IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW MICHAEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46288

FILED

JUN 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Andrew Michael was originally charged with one count of practicing medicine without a license, a category C felony. Pursuant to negotiations, Michael pleaded guilty to one count of attempting to practice medicine without a license, under which he could be sentenced for either a gross misdemeanor or a category D felony. On August 19, 2005, the district court sentenced Michael for a felony and ordered the sentence suspended, placing Michael on probation for a period of four years and ordering Michael to serve 120 days in jail as a condition of probation. On October 6, 2005, Michael filed a motion to withdraw his guilty plea. The district court denied the motion without conducting an evidentiary hearing.

Michael contends that the district court erred by denying his motion without conducting an evidentiary hearing. "A defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual

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allegations belied or repelled by the record."[1] Michael's allegations that he did not understand the possible consequences of pleading guilty to a "wobbler" and that his attorney promised him he would be sentenced for a gross misdemeanor are belied by the record. Specifically, the guilty plea memorandum properly stated that he could be sentenced for either a felony or gross misdemeanor and set forth the range of punishment for each. Moreover, the agreement stated that Michael was not pleading guilty "by virtue of any promises of leniency," and when he entered his plea, Michael informed the court that he was pleading guilty because he was, in fact, guilty. We therefore conclude that the district court did not err by refusing to conduct an evidentiary hearing.

We further conclude that the district court did not err by denying the motion. NRS 176.165 provides, in pertinent part, that a judgment of conviction may be set aside and the guilty plea withdrawn after sentencing "[t]o correct manifest injustice." Michael has failed to demonstrate that his guilty plea resulted in a manifest injustice. Specifically, Michael informed the court that he was pleading guilty voluntarily, that he understood the nature of the charges against him, and that his attorney had been available to assist him and answer any questions he had.

Moreover appellant has failed to meet his burden of showing that his guilty plea was not entered knowingly and voluntarily.[2]

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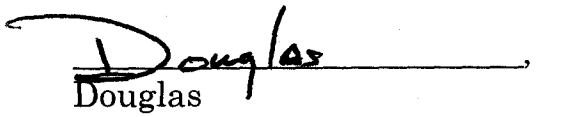
[1]Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[2]See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (a guilty plea is presumptively valid, and the defendant has the burden to establish that the plea was not entered knowingly and intelligently).

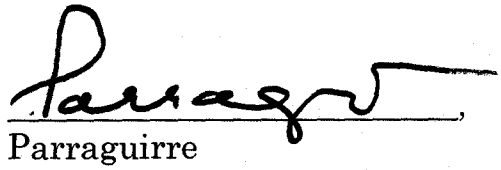
Accordingly, we cannot conclude that the district court clearly abused its discretion in denying appellant's motion to withdraw his plea.[3]

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

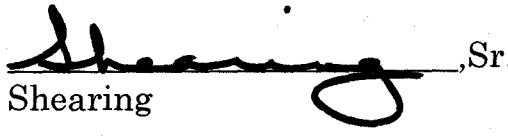
ORDER the judgment of the district court AFFIRMED.[4]



_____, J.
Douglas



_____, J.
Parraguirre



_____, Sr. J.
Shearing

cc: Hon. Valorie Vega, District Judge
Law Office of John J. Momot
Attorney General George Chanos/Carson City
Attorney General George Chanos/Las Vegas
Clark County District Attorney David J. Roger
Clark County Clerk

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[3]See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) ("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.'" (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368)).

[4]The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.