

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERARD LUNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46740

FILED

OCT 17 2006

BY *Janette M. Bloom*
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of child abuse and neglect with substantial mental harm. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Gerard Luna to a prison term of 24 to 96 months, suspended the sentence and placed Luna on probation for a period of 5 years.

Luna contends that the district court erred by denying his presentencing motion to withdraw his guilty plea without appointing counsel to assist him with the motion. "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.'"¹ 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

¹Woods 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.

circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."²

In this case, the district court found that Luna's plea was validly entered, based on the totality of the circumstances. We conclude that Luna has not demonstrated that the district court clearly abused its discretion.³

Having considered Luna's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Stein & Rojas
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

³Bryant 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).