

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO ROBLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46916

FILED

FEB 08 2007

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 first-degree kidnapping and battery with intent to commit sexual assault. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Julio Robles to serve a prison term of life with parole eligibility in 5 years on the kidnapping count and a consecutive prison of life with parole eligibility in 10 years on the battery count. The district court also imposed a special sentence of lifetime supervision.

Robles contends that the district court abused its discretion by denying his presentence motion to withdraw the guilty plea. Citing to Jezierski v. State,¹ Robles contends that allowing him to withdraw his guilty plea would be "fair and just" given defense counsel's testimony at the hearing on the motion that she did not advise him of lifetime supervision as required by Palmer v. State.² We conclude that Robles' contention lacks merit.

¹107 Nev. 395, 396, 812 P.2d 355, 356 (1991) ("[n]o public policy supports binding a defendant to his plea where the plea was made under misconception, and where the State has not yet been prejudiced").

²118 Nev. 823, 59 P.3d 1192 (2002).

“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.’”³ In deciding 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.⁴ A defendant has no right, however, to withdraw his plea merely because he moves to do so prior to sentencing or because the State failed to establish actual prejudice.⁵ On appeal from the district court’s determination, we 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.⁶

In denying the presentence motion to withdraw the plea, the district court found that Robles "was specifically advised and aware that he was subject to lifetime supervision prior to entering his guilty plea." The district court's finding is supported by substantial evidence. In particular, at the plea canvass and in the signed written plea agreement, Robles was advised that he would be subject to lifetime supervision. Additionally, at the hearing on the motion, an email communication was

³Woods 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.

⁴See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

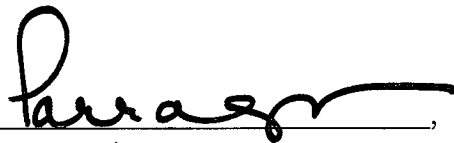
⁵See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

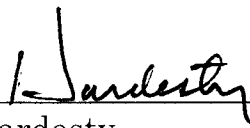
⁶Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

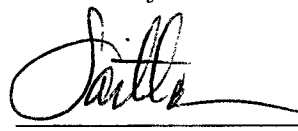
admitted into evidence. In the email, defense counsel informed the district attorney that she had "explained [to Robles] both the lifetime supervision and the lifetime registration requirement as a sexual offender but will go through the specifics if the judge requires before a plea." Although defense counsel testified that she did not discuss lifetime supervision with Robles and explained that her email communication was referring to lifetime parole, the district court found that her testimony was not credible. Specifically, the district court noted that defense counsel may not have "recalled the parameters of all of her discussions with her client," but her own email communication, the written plea agreement, and the transcript of the plea canvass indicate that Robles was aware of the consequence of lifetime supervision. Accordingly, the district court did not abuse its discretion by denying the presentence motion to withdraw the guilty plea.

Having considered Robles' contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk