

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY L. DAYMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47148

FILED

AUG 14 2006

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 three counts of attempted lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Gregory Daymon was sentenced on each count to serve a prison term of 48-120 months. Counts 1 and 2 were ordered to run consecutively to each other, while count 3 was ordered to run concurrently to counts 1 and 2.

Daymon's sole contention on appeal is that the district court erred when it denied his presentence motion to withdraw his guilty plea. Guilty pleas upon the advice of counsel are presumptively valid.¹ Daymon contends he "insisted upon his innocence" despite signing a guilty plea agreement because of the possibility of probation if a satisfactory psychosexual evaluation was returned.² After his guilty plea, but before

¹Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

²We note Daymon did not plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

sentencing, Daymon offered an affidavit from the victim, purporting to recant the incidents which Daymon previously pled guilty to.³

"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.'"⁴ 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."⁵

Daymon does not allege that his plea was not entered voluntarily, knowingly and intelligently. Daymon's plea agreement was reduced to writing, where he admitted to the facts which support all the elements of the offenses. The district court did not find the victim's recantation credible.

A district court is granted considerable discretion in its determination of the validity of a guilty plea, and as such, the appellant has the burden of showing an abuse of discretion.⁶ In light of the totality

³We note the victim was residing with Daymon, in violation of a court order, during the period between his guilty plea and the time he filed his motion to withdraw the guilty plea.

⁴Woods 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.

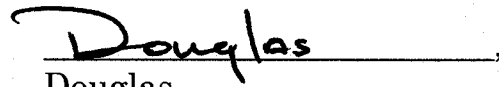
⁵Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

⁶Bryant 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).

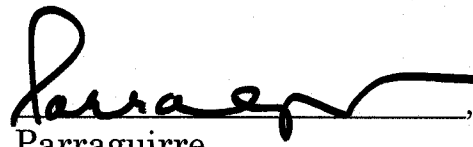
of the circumstances, we cannot say the district court abused its discretion in its denial of Damon's request to withdraw his plea.

Therefore, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Yampolsky, Ltd.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk