

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
EMERSON REYNALDO PINEDA,
Respondent.

No. 48600

FILED

MAY 09 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubado*
CHIEF DEPUTY CLERK

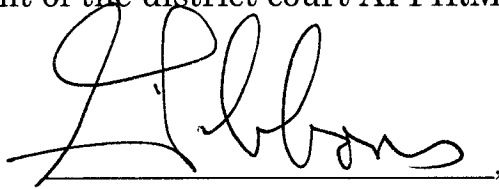
This is an appeal from an order of the district court granting respondent's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

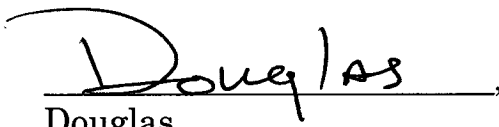
Respondent Emerson Pineda was originally charged with one count of possession of a stolen vehicle. He entered into an agreement whereby he would plead guilty to the felony charge of possession of a stolen vehicle. If he successfully completed probation, Pineda would be allowed to withdraw his guilty plea and plead guilty to a gross misdemeanor charge of unlawful taking of a vehicle. Pineda was sentenced according to the agreement and placed on probation. When Pineda reported to the Division of Parole and Probation to begin his probationary period, he was detained by representatives of the Immigration and Customs Enforcement Bureau of the Department of Homeland Security and subsequently deported.

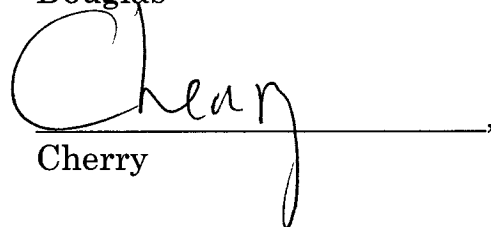
Pineda moved to withdraw his guilty plea, and the district court granted the motion. On appeal, the State argues that the district court erred because Pineda was fully informed of the possible consequences of his guilty plea, including possible deportation.

We conclude, however, that there is doubt about the voluntariness of appellant's plea. It appears from the record before this court that part of the inducement for Pineda's guilty plea was that he would be allowed to complete probation. Because of Pineda's immigration status, it was impossible for him to obtain the benefit of the bargain. "[W]here the provisions of the plea agreement or bargain later become unenforceable, the plea is involuntary. This is true even though the State or the court never did have the authority to ensure compliance with the plea bargain."¹ We therefore conclude that the district court did not err by granting Pineda's motion to withdraw his plea, and we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

¹Ex parte Austin, 746 S.W.2d 226, 227 (Tex. Crim. App. 1988) (citation omitted).

²On March 7, 2007, respondent's counsel Benson Lee filed a motion to withdraw as counsel in this appeal. Cause appearing, the motion is granted.

cc: Hon. Valerie Adair, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Law Office of Benson Lee, Esq.
Eighth District Court Clerk