

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE VALENTIN MORA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49497

FILED

JAN 10 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Jose Valentin Mora to serve a prison term of 10-25 years and ordered him to pay a fine of \$5,000.

Mora contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Specifically, Mora claims that the plea canvass was insufficient and that the district court "failed to explore the extent of any promises or inducements made regarding the prosecution of the co-defendant's case which caused [him] to plead guilty." We conclude that Mora is not entitled to relief.

"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 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

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.

the defendant entered the plea voluntarily, knowingly, and intelligently.² The district court “has a duty to review the entire record to determine whether the plea was valid. . . . [The district court] may not simply review the plea canvass in a vacuum.”³ 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.⁴ Nevertheless, a more lenient standard applies to motions filed prior to sentencing than to motions filed after sentencing.⁵

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.⁶ “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.”⁷ If the motion to withdraw is based on a claim that the guilty plea was not

²See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

³Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁴See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

⁵See Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004).

⁶NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984)).

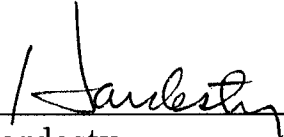
⁷Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

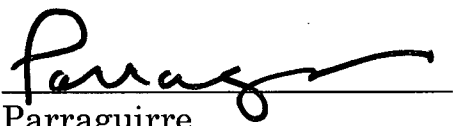
entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.⁸

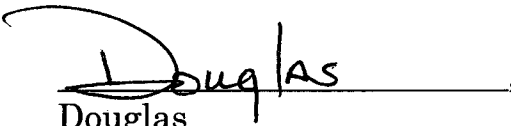
We conclude that Mora failed to substantiate his claim that his guilty plea was not entered knowingly and intelligently. The district court found that there was “no apparent reason to withdraw a plea that was entered pursuant to all this negotiation and canvassing” and denied the motion. Our review of the record on appeal reveals that Mora was thoroughly canvassed by the district court prior to the entry of his guilty plea, and we note that he informed the district court that he read and signed the written guilty plea agreement and understood the nature of the package plea deal contingent upon the guilty plea of his co-defendant/brother, Alfredo Mora. Therefore, we conclude that the district court did not abuse its discretion in denying Mora’s presentence motion to withdraw his guilty plea.

Having considered Mora’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁸See *id.*

cc: Hon. Steven P. Elliott, District Judge
Steven L. Sexton
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk