

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 49861

FILED

JUN 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14 years. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Julio Alemendarez to a term of life in prison with the possibility of parole after 10 years and imposed a special sentence of lifetime supervision to commence upon his release from any term of imprisonment, probation, or parole. Alemendarez appeals from the judgment of conviction.¹

Alemendarez argues that his guilty plea was not knowingly and voluntarily entered because he did not fully understand the plea and its consequences due to his lack of education and understanding of the English language and because counsel did not fully explain the plea and its consequences. Alemendarez also suggests that the district court abused its discretion in denying a presentence motion to withdraw the

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

guilty plea. For the reasons discussed below, we conclude that this appeal lacks merit.

As this court explained in Bryant v. State, a guilty plea is presumptively valid, and a defendant therefore carries the burden of establishing that the plea was not entered knowingly and intelligently.² Moreover, Bryant requires that a defendant challenge the validity of a guilty plea in the district court in the first instance.³ Accordingly, this court warned in Bryant that it will not permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction unless the defendant brought a presentence motion to withdraw the guilty plea under NRS 176.165.⁴ This court has recognized an exception to that rule, however, for cases in which the error clearly appears from the record.⁵

Here, Alemendarez filed a presentence motion to withdraw the guilty plea but voluntarily withdrew the motion before the district court could consider and rule on it. It appears that Alemendarez then submitted another motion to withdraw, but the district court determined that the motion had not been properly filed and therefore did not rule on it. Under the circumstances, we conclude that Alemendarez did not challenge the validity of the guilty plea in the district court and that he

²102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

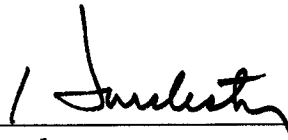
³Bryant, 102 Nev. at 272, 721 P.2d at 367-68.

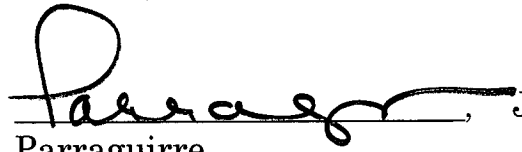
⁴Id.

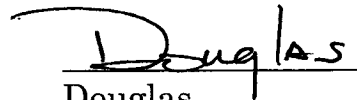
⁵Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994).

cannot challenge it in the first instance in this appeal. And Alemendarez has not demonstrated error clearly appearing from the record that would warrant our consideration of his challenge to the guilty plea in the first instance on appeal. Accordingly, we conclude that this appeal lacks merit, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Law Offices of Brandon B. Smith, P.C.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk