

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZENDELL L. DESPENZA A/K/A
ZENDELL LLOYD DESPENZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50084

FILED

FEB 11 2008

TRACIE LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted sexual assault (count 1) and attempted sexual assault with the use of a deadly weapon (count 2). Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Zendell Despenza to serve a prison term of 24 to 90 months for count 1 and a concurrent prison term of 24 to 90 months with an equal and consecutive prison term for the use of a deadly weapon for count 2.

Despenza contends that the district court abused its discretion in denying his presentence motion to withdraw the guilty plea. Specifically, Despenza argues that his guilty plea was invalid because defense counsel filed no pretrial motions and Despenza was not advised about the lifetime supervision requirement. Additionally, Despenza argues that the motion to withdraw the guilty plea should be granted because the State would suffer no prejudice.

A guilty plea is presumptively valid, and the defendant carries the burden of establishing that the plea was not entered knowingly and

intelligently.¹ In determining the validity of a guilty plea, this court considers the totality of the circumstances, including the advisements given during the oral plea canvass.² And the burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error.³

Here, Despenza has failed to provide this court with a transcript of the plea canvass so that this court can effectively review his challenge to the validity of the guilty plea. We also note that Despenza raised his claim regarding the lifetime supervision requirement for the first time on direct appeal.⁴ Finally, we note that Despenza's claim of ineffective assistance of counsel lacks adequate specificity.⁵ In particular, Despenza has failed to identify the pretrial motions defense counsel should have filed or explain how defense counsel's deficient performance affected his decision to enter a guilty plea. Accordingly, we conclude that

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

²State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

³Greene v. State, 96 Nev. 555, 612 P.2d 686 (1980); Lee v. Sheriff, 85 Nev. 379, 455 P.2d 623 (1969).

⁴See McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").

⁵Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

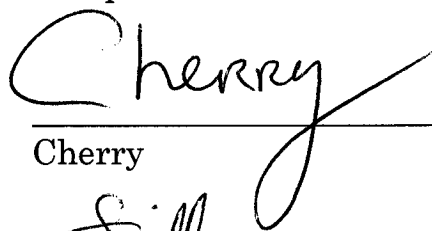
Despenza has failed to demonstrate that the district court erred in denying his motion, and we therefore

ORDER the judgment of conviction AFFIRMED.



Maupin

J.



Cherry

J.



Saitta

J.

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Lizzie R. Hatcher
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk