

IN THE SUPREME COURT OF THE STATE OF NEVADA

ODELL CARTER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50180

FILED

MAY 22 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingos*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence causing death. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court sentenced appellant Odell Carter Jr. to serve a prison term of 90-240 months and ordered him to pay a fine of \$2,000 and restitution in the amount of \$1,935.81.

First, Carter contends that the district court abused its discretion by denying his motion to dismiss counsel and appoint alternate counsel without conducting a hearing. Carter entered a guilty plea soon after the district court denied his motion. After Carter expressed a desire to withdraw his guilty plea, counsel was removed and new counsel was appointed. New counsel's representation continued through Carter's sentencing hearing. Carter now claims that the district court's eventual dismissal of his public defender demonstrates that the court erred in denying his earlier motion to dismiss.

Carter waived any challenge to the district court's denial of his motion to dismiss counsel and appoint alternate counsel. This court has repeatedly stated that, generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See

Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)) (first alteration in original). Moreover, there is no indication in the record that Carter expressly preserved this issue for review on appeal. See NRS 174.035(3).

Second, Carter contends that the district court abused its discretion by denying his proper person presentence motion to withdraw his guilty plea.<sup>1</sup> Specifically, Carter claims he would have proceeded to trial if counsel had secured, prior to the entry of his plea, “a full-scope toxicology report of the decedent and information from an accident reconstruction report.” We disagree with Carter’s contention.

“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.’” Woods 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. In deciding whether a defendant has “advanced a substantial, fair, and just reason to withdraw a plea, the district court must consider the totality of the circumstances to determine

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<sup>1</sup>Alternate counsel was appointed to determine whether a basis existed for the filing of a motion to withdraw the guilty plea. Counsel subsequently informed the district court that, in his opinion, Carter’s plea was valid and entered knowingly and that a motion to withdraw would not be meritorious. As a result, Carter eventually filed his motion to withdraw in proper person. Carter has the assistance of counsel in this appeal.

whether the defendant entered the plea voluntarily, knowingly, and intelligently.” See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001). A district court “has a duty to review the entire record to determine whether the plea was valid. A district court may not simply review the plea canvass in a vacuum.” Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993). 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. See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994). Nevertheless, a more lenient standard applies to motions filed prior to sentencing than to motions filed after sentencing. See Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004).


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. NRS 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)). “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.” Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). If the motion to withdraw is based on a claim that the guilty plea was not entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant. See id.


We conclude that the district court did not abuse its discretion in denying Carter’s presentence motion to withdraw his guilty plea. Carter argues that the full-scope toxicology report that he did not receive until after he entered his plea showed that the decedent had prohibited

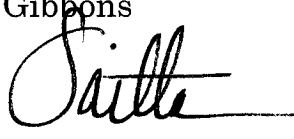
substances in her system and thus was pertinent to his defense. Carter claims that he would have proceeded to trial if he had this information. Former counsel, Josie Bayudan, however, informed the district court that, prior to the entry of Carter's plea, the defense was in possession of a preliminary toxicology report which indicated that the decedent had a small amount of prohibited substances in her system and that Carter was aware that she requested the full-scope toxicology report. Further, contrary to Carter's assertion, Bayudan informed the district court that she had provided Carter and his family, on multiple occasions, with copies of the accident reconstruction report prior to the entry of his plea. As a result, the district court orally denied Carter's motion. Based on the above, we conclude that Carter has failed to substantiate his claim that his guilty plea was not entered knowingly and intelligently.

Having considered Carter's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Jennifer Togliatti, District Judge  
Karen A. Connolly, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk