

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO R. GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50197

**FILED**

DEC 03 2009

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 twelve counts of sexual assault with a minor under fourteen years of age. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. Appellant Mario Garcia was sentenced to concurrent terms of life in prison with the possibility of parole after 20 years.

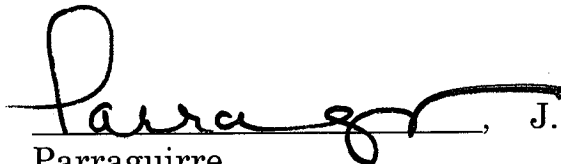
Relying on Cripps v. State, 122 Nev. 764, 770, 137 P.3d 1187, 1191 (2006), Garcia argues that the district court abused its discretion in denying his presentence motion to withdraw the guilty plea on the ground that the district court improperly participated in the plea negotiations. We conclude that this claim lacks merit because, unlike the situation in Cripps, Garcia did not plead guilty as the result of plea negotiations with the State and therefore the district court did not improperly participate in plea negotiations. We decline to extend Cripps any further. Moreover, Garcia otherwise failed to demonstrate that his guilty plea was involuntary. See Molina v. State, 120 Nev. 185, 87 P.3d 533, 537 (2004).

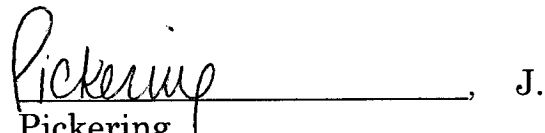
Garcia also argues that the district court abused its discretion in denying his presentence motion to withdraw the guilty plea on the ground that trial counsel provided ineffective assistance by failing to

advise Garcia to continue through the trial and allow the jury to weigh the evidence given that he had not been offered a plea negotiation and would receive no benefit as a result of pleading guilty to all of the charges. We disagree because Garcia failed to meet his burden of proving that counsel's performance was deficient or that, but for counsel's allegedly deficient performance, he would not have pleaded guilty and would have insisted on proceeding with the trial. See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); Hill v. Lockhart, 474 U.S. 52 (1985).

Having considered Garcia's arguments and concluding that they lack merit, we

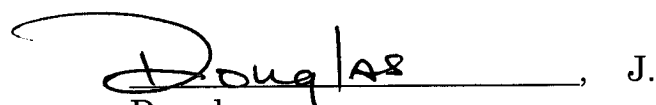
ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Pickering, J.

DOUGLAS, J., dissenting:

I dissent and would reverse and remand with directions that Garcia be allowed to withdraw his guilty plea. In particular, I conclude that the district court violated the bright-line rule established in Cripps.

  
Douglas, J.

cc: Hon. Kenneth C. Cory, District Judge  
Law Office of Betsy Allen  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk