IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD WILLIAM HOAGLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50801

FILED

AUG 13 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 an Alford plea,[1] of one count of driving and/or being in actual physical control of a motor vehicle while under the influence of a controlled substance. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Richard William Hoagland to serve 2 to 5 years in prison, with credit for 283 days time served, and ordered Hoagland to pay a $1,000 fine.

On appeal, Hoagland argues that the district court abused its discretion in denying his presentence motion to withdraw his Alford plea without conducting an evidentiary hearing. In particular, Hoagland argues that his plea was invalid and the district court should have granted the motion because he was not advised "regarding the fine and his driver's license." We disagree.

NRS 176.165 permits a defendant to file a motion to withdraw a plea before sentencing. The district court may grant such a motion in its

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

discretion for any substantial reason that is fair and just.[2] In making its decision, the district court should conduct an evidentiary hearing unless the claims in the motion are belied by the record or not supported by sufficient factual allegations that, if true, would warrant relief.[3] "On appeal from a district court's denial of a motion to withdraw a . . . plea, this court '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.'"[4]

Here, the district court minutes indicate that when Hoagland appeared for sentencing on November 29, 2007, his counsel informed the court that Hoagland wanted to withdraw his plea because, among other things, the district court "failed to advise him regarding the fine and driver's license." The district court continued the proceedings. According to the district court minutes, when Hoagland again appeared for sentencing on December 11, 2007, the district court indicated that it had received a letter from Hoagland and had reviewed the transcript of the plea canvass. The district court also heard argument from the prosecutor

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[2]State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

[3]Cf. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

[4]Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

in opposition to the oral motion to withdraw the plea. The district court then denied the motion.[5]

Hoagland's first claim—that he was not advised regarding the fine—is belied by the record in two respects. First, the written guilty plea agreement informed Hoagland that, in addition to a prison term, he would "be fined no less than $2,000.00 [and] no more than $5,000.00." Hoagland acknowledged during the plea canvass that he had read and understood the plea agreement. Second, during the plea canvass, the district court specifically informed Hoagland that as a result of the plea, he faced "a fine of between 2,000 and 5,000 dollars." Hoagland indicated that he understood. Therefore, based on the written plea agreement and the plea canvass, Hoagland clearly was advised of the fine.

Hoagland's second claim—that he was not advised regarding "his driver's license"—does not warrant relief. Hoagland does not explain on appeal what he should have been told as to his driver's license, and the judgment of conviction says nothing about Hoagland's driver's license. Hoagland has not demonstrated that his plea is invalid because he was not advised on some unknown issue with respect to his driver's license.[6]

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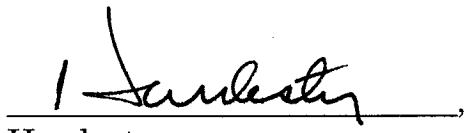
[5]Hoagland has not provided this court with the transcript of the proceedings in district court on December 11, 2007, during which the district court heard argument and ruled on the motion to withdraw.

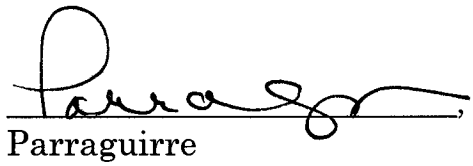
[6]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider arguments that are not supported by legal authority or cogent argument); Bryant, 102 Nev. at 272, 721 P.2d at 368 (reiterating that defendant has burden to establish that plea was not entered knowingly and intelligently).

Having considered Hoagland's arguments, we conclude that he has not demonstrated that the district court abused its discretion in denying the presentence motion to withdraw the plea. Accordingly, we

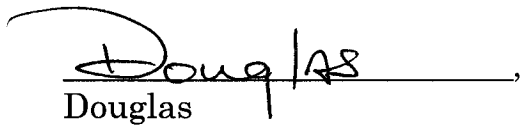
ORDER the judgment of conviction AFFIRMED.



_____, J.
Hardesty



_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk