

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERONIMO GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51389

FILED

JAN 22 2009

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Geronimo Gonzalez's post-conviction motion to withdraw his no contest plea. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On November 15, 2007, the district court convicted Gonzalez, pursuant to a plea of no contest, of one count of conspiracy to commit battery with a deadly weapon. The district court sentenced Gonzalez to 12 months in the county jail, ordered the sentence suspended, and placed Gonzalez on probation for a period of 36 months. Gonzalez did not file a direct appeal.

On November 26, 2007, Gonzalez filed a motion to withdraw his no contest plea. The State opposed the motion. The district court conducted an evidentiary hearing and subsequently denied Gonzalez's motion. This appeal followed.

Gonzalez contends that the district court abused its discretion by denying his post-conviction motion to withdraw his plea of no contest. He specifically claims that the district court erred in determining that

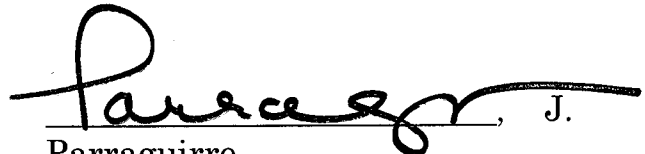
actual innocence is not a relevant issue when considering a motion to withdraw a guilty plea.

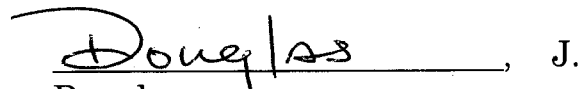
“To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.” NRS 176.165. In determining whether manifest injustice occurred, the court should consider whether the defendant acted voluntarily, understood the nature of the charges against him, and understood the consequences of his plea. See Wilson v. State, 99 Nev. 362, 372-73, 664 P.2d 328, 334-35 (1983). “The question of an accused’s guilt or innocence is generally not at issue in a motion to withdraw a guilty plea.” Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (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).

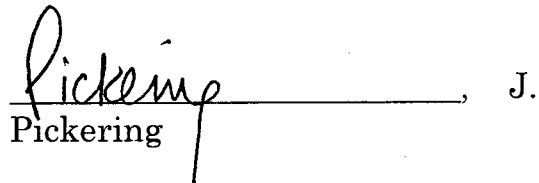
Our review of the record on appeal reveals that the district court found that Gonzalez was originally charged with a category B felony; pleaded no contest to a fictitious gross misdemeanor; received proper assistance from his attorney and court interpreter; and acted voluntarily, understood the nature of the charge against him, and understood the consequences of his plea. The district court considered the factual basis for the plea agreement and the testimony presented during sentencing and determined that, if the case had gone to trial, Gonzalez “could well have ended up with a class B felony and a serious crime.” Under these circumstances, Gonzalez has not demonstrated the existence of manifest

injustice or shown that the district court clearly abused its discretion by denying his motion to withdraw his plea of no contest. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Richard Wagner, District Judge
Steve E. Evenson
Attorney General Catherine Cortez Masto/Carson City
Pershing County District Attorney
Pershing County Clerk