

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMID REZA GHANEI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52024

FILED

SEP 25 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Amid Reza Ghanei's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Pursuant to negotiations with the State, Ghanei entered a guilty plea to one count of sexual assault of a child under 14 years of age and one count of lewdness with a child under 14 years of age. Prior to sentencing, Ghanei expressed dissatisfaction with defense counsels' representation and filed a motion to withdraw the guilty plea. The district court sentenced Ghanei to serve two consecutive prison terms of 5 to 20 years and appointed alternate counsel to handle Ghanei's motion to withdraw the guilty plea.¹ Ghanei did not file a direct appeal.

Ghanei filed a second motion to withdraw the guilty plea in the district court. The State filed an opposition, Ghanei filed a reply, and the district court conducted two evidentiary hearings. The district court

¹District Judge Stewart Bell was the sentencing judge.

found that defense counsel were effective, determined that the sentencing court had not ruled on Ghanei's motion to withdraw the guilty plea, and concluded that the serious nature of the charges constituted a fair and just reason for granting the motion.

The State filed a motion asking the district court to reconsider its decision to allow Ghanei to withdraw the guilty plea. Ghanei filed an opposition, the State filed a reply, and the district court heard argument on the motion. Among other things, the State argued that the sentencing court denied Ghanei's first motion to withdraw the guilty plea and therefore Ghanei's second motion to withdraw the guilty plea should have been reviewed for manifest injustice. In a separate proceeding, the sentencing court stated that it denied Ghanei's first motion to withdraw the guilty plea and then sentenced him. Thereafter, the district court granted the State's motion to reconsider and denied Ghanei's second motion to withdraw the guilty plea. This appeal followed.

Ghanei contends that the district court abused its discretion by denying his second motion to withdraw the guilty plea. Ghanei claims that defense counsels' ineffective assistance rendered his guilty plea invalid. See Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004) (discussing challenges to the validity of a guilty plea based on claims of ineffective assistance of counsel). And Ghanei argues that he suffered manifest injustice when his defense counsel failed to properly investigate his case before advising him to accept the plea negotiation. Ghanei relies primarily on Buffalo v. State, 111 Nev. 1139, 901 P.2d 647 (1995), and Warner v. State, 102 Nev. 635, 729 P.2d 1359 (1986), to support his

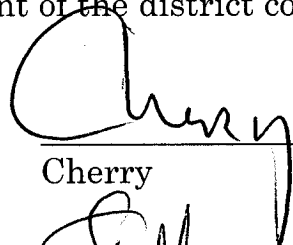
contention. We note that both of these opinions involve cases that went to trial.

“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 exists, 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). “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), holding limited on other grounds by Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994).


Here, following two evidentiary hearings, the district court found that Ghanei had received effective assistance of counsel. Our review of the record on appeal reveals that the district court’s finding is supported by substantial evidence and is not clearly wrong. Further, review of the record, and particularly the guilty plea memorandum, transcript of the plea canvass, and transcripts of the evidentiary hearings, reveals that Ghanei acted voluntarily when he entered his plea, understood the nature of the charges against him, and understood the consequences of his plea. Under these circumstances, Ghanei has not shown manifest injustice nor has he demonstrated that the district court clearly abused its discretion by denying his motion to withdraw the guilty plea.

Having considered Ghanei's contention and concluded that it is without merit, we

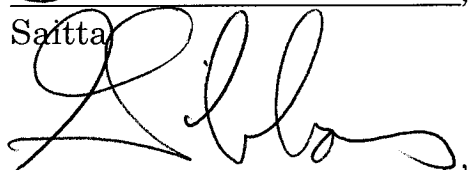
ORDER the judgment of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Draskovich & Oronoz, P.C.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk