

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER JOSE PASOS-DONIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54152

FILED

JAN 07 2010

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

ORDER OF AFFIRMANCE

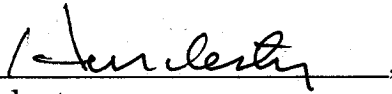
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

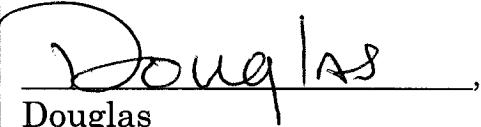
Appellant challenges the denial of his presentence motion to withdraw the guilty plea based on claims that his counsel affirmatively misrepresented the immigration consequences of his guilty plea and he is innocent. We presume that the district court correctly assessed the validity of a plea on a motion to withdraw the plea and will not reverse its decision absent an abuse of discretion. Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004). When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

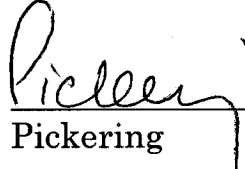
Appellant failed to meet his burden of proving that counsel affirmatively misrepresented the possible immigration consequences of his guilty plea. See Strickland v. Washington, 466 U.S. 668 (1984) (establishing two-part test for ineffective assistance of counsel); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting test in

Strickland); Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (burden of proving ineffective assistance is on defendant). The evidence presented below, including the written plea agreement and testimony from counsel and appellant, established that appellant was informed that entering the guilty plea may result in negative immigration consequences. There was no evidence presented that those consequences were downplayed or otherwise misrepresented to appellant. Appellant therefore failed to meet the deficiency prong of the Strickland test. See Rubio v. State, 124 Nev. ___, 194 P.3d 1224 (2008). Appellant's claim that he is innocent does not provide a substantial reason that makes granting the privilege of withdrawing the guilty plea fair and just in the absence of any evidence that his plea was involuntary or unknowing or that he is factually innocent. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969); Molina, 120 Nev. at 190, 87 P.3d at 537 (defendant bears burden of providing that plea is invalid); Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95-96 (1998) (discussing claim of factual innocence as grounds for presentence motion to withdraw guilty plea). We therefore conclude that the district court did not abuse its discretion, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Law Offices of Donn M. Ianuzi
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk