

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACINTO PENA-ALMANZA A/K/A  
JACINTO ALMANZA PENA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54359

**FILED**

**MAY 10 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence of intoxicating liquor (felony). Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Jacinto Pena-Almanza raises two issues on appeal.

First, Pena-Almanza argues that the district court erred in failing to enforce the terms of his plea agreement and sentencing him to a misdemeanor because his failure to complete the DUI court program, which was required by the agreement, was not his fault. We disagree. While the guilty plea agreement did not specifically foresee that an Immigration and Customs Enforcement (ICE) detainer would prevent Pena-Almanza from completing the program, it nevertheless anticipated what would happen if he did not complete the program. As the district court sentenced him pursuant to the terms of the plea agreement, he fails to demonstrate that his claim for specific enforcement has merit.

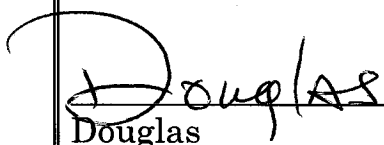
Second, Pena-Almanza argues that the district court erred in not permitting him to withdraw his guilty plea because the intent of the negotiation had been frustrated by the ICE detainer. We conclude that


this contention lacks merit. The record does not indicate that Pena-Almanza filed a motion to withdraw his guilty plea. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (providing that challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing post-conviction proceedings), holding limited on other grounds by Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994); see also O'Guinn v. State, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002). To the extent that his argument at the sentencing hearing placed this issue before the district court, we conclude that Pena-Almanza failed to demonstrate that his plea was invalid. As we concluded above, the plea agreement was not violated. Further, because he acknowledged the consequences of failing to complete the DUI court program in the plea agreement, he fails to demonstrate that his inability to complete the program due to an ICE detainer frustrated the agreement to the point that his plea was rendered involuntary. See Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001) ("A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.").

Having considered Pena-Almanza's contentions, and concluding that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Donald M. Mosley, District Judge  
Law Offices of Tony Liker  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk