

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRES H. MENDOZA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55983

**FILED**

JAN 13 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant Andres H. Mendoza's post-conviction motion to withdraw his guilty plea.<sup>1</sup> Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

On March 19, 2010, Mendoza filed a proper person motion to withdraw his plea entered pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), claiming that ineffective assistance of counsel rendered his plea invalid. To prove a claim of ineffective assistance of counsel, an appellant must demonstrate (a) that counsel's deficient performance fell below an

---

<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

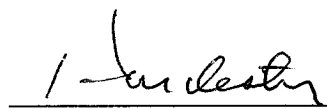
objective standard of reasonableness and (b) resulting prejudice, specifically, a reasonable probability that, but for counsel's errors, "[appellant] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984). Additionally, a guilty plea is presumptively valid, and appellant carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, we consider the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

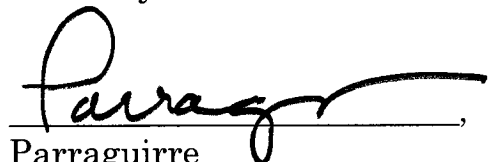
Mendoza claimed that his plea was not entered freely and voluntarily because he was intentionally misinformed about the availability of probation as a sentencing option. In denying Mendoza's motion, the district court stated that it considered the totality of the circumstances and found that he failed to demonstrate that manifest injustice required the withdrawal of his plea. See NRS 176.165; Freese, 116 Nev. at 1105, 13 P.3d at 448. Further, our review of the record reveals that Mendoza failed to carry his burden and demonstrate that counsel was ineffective and/or his plea was invalid. Therefore, we

conclude that the district court did not err by denying Mendoza's motion and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Saitta

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

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Abbi Silver, District Judge  
Andres H. Mendoza  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>2</sup>We have considered the proper person document submitted in this matter and conclude that no relief is warranted for the reasons discussed above.