

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP TYRONE WOOTSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56410

**FILED**

**MAR 18 2011**

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

ORDER OF REVERSAL AND REMAND


This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary and conspiracy to commit a crime. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Phillip Tyrone Wootson contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. A defendant may move to withdraw a plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a motion "for any substantial, fair, and just reason." Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001).

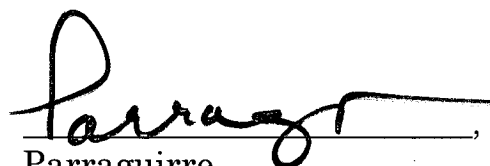
Wootson filed a proper person motion to withdraw his guilty plea, alleging, inter alia, that he had received ineffective assistance of counsel relating to the entry of his guilty plea. The district court summarily denied the motion, stating that "a motion to withdraw cannot be brought on a pro per basis." See EDCR 7.40(a). When Wootson reiterated his claims at the sentencing hearing, the district court addressed some of the claims but did not review the entire record and did not address all of Wootson's claims.

The local rules of the Eighth Judicial District Court prohibit a defendant from appearing in a matter without the court's consent if he or she is represented by counsel, *id.*; however, where a defendant asserts legitimate grounds for withdrawal of the plea based on ineffective assistance of trial counsel, the district court is required to appoint new counsel to assist the defendant in pursuing his motion, since, in such circumstances, trial counsel cannot properly continue representation. See RPC 1.7(a)(2); RPC 3.7; U.S. v. Del Muro, 87 F.3d 1078, 1080 (9th Cir. 1996) (counsel cannot litigate a motion for a new trial based on that counsel's ineffectiveness); DiMartino v. Dist. Ct., 119 Nev. 119, 121-22, 66 P.3d 945, 946-47 (2003) (an attorney may not act as an advocate and a witness in the same proceeding). Therefore, the district court should have appointed alternate counsel to represent Wootson on his motion to withdraw, and we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

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

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

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

<sup>1</sup>Because we reverse the judgment of conviction on this basis we do not address Wootson's claim that the sentence imposed constitutes cruel and unusual punishment.

cc: Hon. Valorie Vega, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk