

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR J. SAHAGUN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58703

FILED

JUN 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Victor J. Sahagun argues that the district court erred by denying his motion to withdraw his guilty plea. Specifically, Sahagun argues that he should be allowed to withdraw his plea because (1) it was rushed and he was confused about the terms of the plea and (2) the State violated Brady¹ when it failed to inform Sahagun about the arrest of the deputy district attorney who had negotiated his plea. We disagree.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). "On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the validity

¹Brady v. Maryland, 373 U.S. 83 (1963).

of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.” Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).


First, Sahagun argues that his plea was entered hastily and in confusion. Sahagun's claims are belied by the record. Two days before he entered the plea, counsel told the district court that plea negotiations were ongoing and Sahagun was granted a continuance for further negotiations. Further, Sahagun signed a guilty plea agreement indicating that he had discussed and understood the charges against him. During the canvass, he told the judge he understood the charges and he did not need further time to discuss the charges with counsel. We conclude that Sahagun's claims lack merit.


Second, Sahagun claims that the district court should have granted his motion to withdraw his guilty plea because the State violated Brady by not disclosing that the prosecutor who had negotiated the plea was subsequently arrested for drug possession. A prosecutor is required to “disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.” State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (quoting Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000)). To prove a Brady violation, the accused must make three showings: (1) the evidence is favorable to the accused because it is exculpatory or impeaching; (2) the State withheld the evidence; and (3) prejudice ensued. Id. (quoting Mazzan, 116 Nev. at 67, 993 P.2d at 37). Sahagun has failed to adequately demonstrate the relevance of the challenged information or that he was prejudiced by not having it before entering his guilty plea. Therefore, we conclude that the district court did

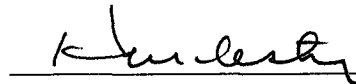
not err by denying Sahagun's motion to withdraw his guilty plea in this instance.

Having considered Sahagun's contentions and concluded they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Saitta

 _____, J.
Pickering

 _____, J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Keith C. Brower
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk