

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO JAVIER JIMENEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58787

FILED

JUL 25 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of conspiracy to commit robbery, two counts of robbery with the use of a deadly weapon, two counts of first-degree kidnapping, and one count of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Appellant Francisco Javier Jimenez contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea without an evidentiary hearing. 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). In making its determination, the district court is required to conduct an evidentiary hearing if the defendant raises claims that are not belied by the record and that would, if true, entitle him to relief. Cf. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We presume that the district court correctly assessed the validity of the plea and will not reverse absent an abuse of discretion. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

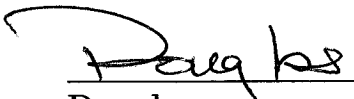
Here, Jimenez filed a presentence motion to withdraw his guilty plea claiming that he did not knowingly and voluntarily enter his plea. Jimenez claimed that his counsel coerced him into pleading guilty by threatening to withdraw from the case if he refused to sign the plea agreement. Jimenez also claimed that he was confused because counsel initially told him the State would be unable to prove first-degree kidnapping but later told him he would get life in prison if the case went to trial.¹ These claims are belied by the record. During his plea canvass, Jimenez specifically told the district court that he was pleading guilty of his own free will and no one forced him to plead guilty. Jimenez also told the district court that he read and understood his guilty plea agreement and counsel was able to answer any questions he had regarding the agreement. Jimenez failed to demonstrate, under the totality of the circumstances, that his plea was not entered knowingly and voluntarily. See Bryant, 102 Nev. at 272, 721 P.2d at 367-68. Therefore, we conclude that the district court did not abuse its discretion by denying Jimenez an evidentiary hearing and finding that his plea was knowing and voluntary. Crawford, 117 Nev. at 721, 30 P.3d at 1125; Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

Jimenez also contends that the district court erred by ordering full restitution to the convenience store he robbed after it was partially reimbursed by its insurance provider. Jimenez argues that his case is not controlled by our decision in Martinez v. State, 115 Nev. 9, 12 & n.5, 974 P.2d 133, 135 & n.5 (1999) (applying rule analogous to the collateral


¹The first-degree kidnapping counts were the only charges that carried a possible life sentence.

source doctrine to restitution), because the reimbursed damages were unrelated to medical expenses. However, Jimenez cites no authority for this proposition and fails to explain why property insurance should be treated different than medical insurance. Therefore, Jimenez has failed to demonstrate that the district court erred by ordering him to pay the full amount of restitution to the victim, see id. (“A defendant’s obligation to pay restitution to the victim may not . . . be reduced because a victim is reimbursed by insurance proceeds.”); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument.”), and we


ORDER the judgment of conviction AFFIRMED.


_____, J.

Douglas


_____, J.

Gibbons


_____, J.

Parraguirre

cc: Hon. Doug Smith, District Judge
Wendy D. Leik
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk