

IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE A. PEARIL A/K/A
THEODORE A. PEARIL, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59124

FILED

MAY 09 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 entered pursuant to a guilty plea of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

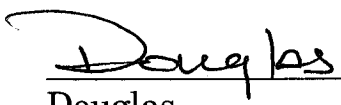
Appellant Theodore A. Pearil contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Pearil argues that his motion was based on newly discovered evidence and the district court should have applied the three-prong test adopted by the Colorado Supreme Court in People v. Schneider, 25 P.3d 755, 761-62 (Colo. 2001).


A district court may grant a presentence motion to withdraw a guilty plea "for any substantial, fair, and just reason." Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). Here, the district court conducted a hearing on Pearil's motion. Pearil argued that he fixed scooters, he did not know the true name of the person who gave him the scooter to fix, and he entered the guilty plea because without the person's true name he could not prove that the scooter was not stolen. Pearil had since seen this person in the county jail and learned his name and now believes that if this information was presented to a jury he would be

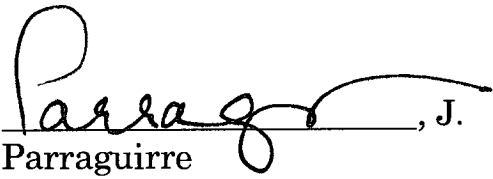
acquitted of possession of a stolen vehicle. The district court was informed that the man's name was Mr. Wright, he had not agreed to testify, and the defense had been unable to locate him. The district court ruled that this was not newly discovered evidence because Pearil knew everything except how to contact the witness before entering his guilty plea.

We conclude that Pearil has failed to demonstrate that the district court abused its discretion in denying his motion to withdraw the guilty plea. See Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004). Moreover, even assuming the identity of the witness was newly discovered evidence and Schneider's test for newly discovered evidence was applicable, we conclude that Pearil failed to meet his burden under that test. See Schneider, 25 P.3d at 762 ("The defendant bears the burden of proof on all three prongs."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

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