

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELLY ELI MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59701

**FILED**

NOV 15 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY Angela  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant argues that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea on the ground that his guilty plea was involuntary due to ineffective assistance of counsel. In this, appellant argues that he should be allowed to withdraw his guilty plea because counsel did not adequately investigate his case by securing his medical records and booking photograph before recommending that he accept the plea negotiation, as those documents would have supported a self-defense theory at trial. He also argues that the district court should have conducted an evidentiary hearing before denying his motion.

A defendant may file a presentence motion to withdraw a guilty plea, NRS 176.165, which the district court may grant "for any substantial, fair, and just reason," Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). "A district court must examine the totality of the circumstances to determine whether a defendant entered his plea

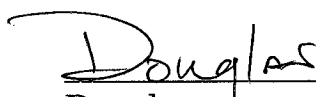
voluntarily, knowingly, and intelligently.” Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004). “A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.” Crawford, 117 Nev. at 722, 30 P.3d at 1125-26. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel’s performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel’s errors, petitioner 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984). Further, appellant was entitled to an evidentiary hearing if he asserted specific factual allegations that, if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

We conclude that the district court did not err by summarily denying appellant’s motion to withdraw his guilty plea. The district court conducted an adequate canvass, including inquiring whether appellant had discussed potential defenses with counsel and whether he had any unanswered questions on that subject, to which appellant responded that he did not. Appellant signed a plea agreement acknowledging that he had discussed possible defenses with counsel. And appellant failed to demonstrate that counsel was ineffective for not securing his medical records and booking photograph. Immediately prior to the plea canvass, counsel informed the district court that appellant had the opportunity to

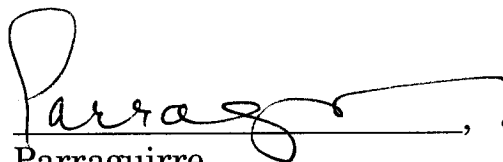
review discovery materials, the police reports, and the photographs related to the incident and that he and appellant “had a full opportunity to go through [the materials].” As to the absence of his medical records and booking photograph, appellant does not identify any information from those items that would have altered his decision to plead guilty had he reviewed those materials before entering his guilty plea.

Having considered appellant’s arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Valorie J. Vega, District Judge  
The Almase Law Group LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk