

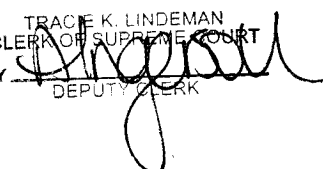
IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS BOLICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62413

FILED

NOV 13 2013

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of DUI. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant argues that the district court erred by denying his presentence motion to withdraw his guilty plea on the ground that he entered his plea in reliance on discovery based on blood analysis performed by an analyst who was subsequently discredited in an unrelated case.¹ NRS 176.165 permits a defendant to file a motion to

¹On appeal, appellant also argues that the district court erred by denying his motion to withdraw his guilty plea because two of his prior misdemeanor convictions were not constitutionally obtained and counsel was ineffective for failing to challenge the blood alcohol test performed by the discredited analyst. However, those grounds were not presented to the district court below in his motion, and therefore we will not consider them in the first instance. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that this court need not consider arguments raised on appeal that were not presented to the district court in the first instance),

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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. Second Judicial Dist. 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 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)).


In his motion, appellant contended that his guilty plea was involuntary and unknowing because the analyst who analyzed his blood sample in connection with a prior DUI conviction that was used to enhance the instant DUI charge to a felony was subsequently discredited for mishandling DNA evidence in an unrelated case. Appellant argued that he was not aware of the analyst’s error before he entered his guilty plea and would not have pleaded guilty had he known. The district court denied the motion, concluding that the analyst did not test appellant’s blood sample in the instant case and therefore no basis existed to support the motion. Further, appellant has presented nothing suggesting that the blood sample related to his prior DUI conviction was mishandled or

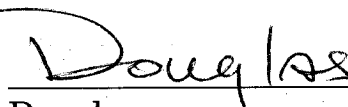
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overruled on other grounds by Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004).

inaccurately analyzed. We therefore conclude that the district court did not err by denying appellant's motion to withdraw his guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.²


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. David B. Barker, District Judge
Carmine J. Colucci & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We note that the State's certificate of compliance is deficient because it does not indicate the number of words contained in the brief as required by NRAP 32(a)(8)(B) and NRAP 3C(h)(3). We caution the State that future failure to comply with the Nevada Rules of Appellate Procedure when filing briefs with this court may result in the imposition of sanctions. See NRAP 3C(n); NRAP 28.2(b).