

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC T. DOUGLAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62645

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary and grand larceny. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

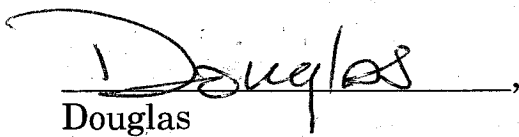
Appellant Eric T. Douglas contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Douglas argues that his pre-plea counsel, Cynthia Dustin, was ineffective for failing to obtain and present to the State, in a timely manner, his medical records, which he sought to use “as a basis for a medical release [from custody] pending sentence.” Douglas claims that as a result of counsel’s deficient performance, the State withdrew a more favorable plea offer than the one he ultimately accepted after new counsel, Patricia Erickson, substituted in. In his motion below, Douglas claimed, among other things, that Dustin failed to adequately communicate with him. Douglas asserts that this court must remand the matter to the district court so he can withdraw his guilty plea and enter a new plea consistent with the more favorable terms of the State’s previous offer. We disagree.

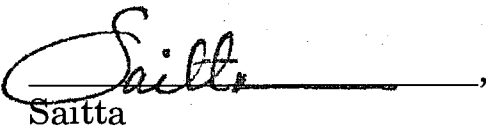
“District courts may grant a motion to withdraw a guilty plea prior to sentencing for any substantial, fair, and just reason.” *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001); *see* NRS 176.165. Here, the district court conducted three evidentiary hearings and heard testimony from Douglas, Cynthia Dustin and her investigator, and two defense witnesses. Both Dustin and her investigator testified that they advised Douglas on multiple occasions over a six-month period to accept the State’s plea offer because it was favorable, and that it would not remain available indefinitely, but that he refused to accept the offer without also gaining a medical release pending sentencing. Although Douglas presented evidence that he told two of his former public defenders and an investigator that he accepted the State’s offer and resolved his case prior to the State’s withdrawal of the plea offer, he failed to demonstrate that he informed Dustin, her investigator, the State, or the district court that he was willing to accept the offer. Regardless, Douglas arguably waived his right to challenge Dustin’s performance during the plea negotiation process by subsequently entering a knowing, voluntary, and intelligent guilty plea while being represented by new counsel, Patricia Erickson. Nevertheless, our review of the record reveals that Douglas failed to either provide a substantial, fair, and just reason which required the withdrawal of his guilty plea, *see Crawford*, 117 Nev. at 721, 30 P.3d at 1125, or demonstrate that Dustin’s performance was deficient, *see Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *see also Missouri v. Frye*, 566 U.S. ___, ___, 132 S. Ct. 1399, 1405-06 (2012); *Lafler v. Cooper*, 566 U.S. ___, ___, 132 S. Ct. 1376, 1384 (2012). Therefore, we conclude that the district court did not abuse its discretion by denying Douglas’

motion, see *Johnson v. State*, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007), and we

ORDER the judgment of conviction AFFIRMED.¹


Gibbons, J.


Douglas, J.


Saitta, J.

cc: Hon. Michelle Leavitt, District Judge
Law Office of Patricia M. Erickson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The fast track statement, response, and reply do not comply with NRAP 3C(h)(1) and NRAP 32(a)(4) because the text in the body of the briefs is not double-spaced. Counsel for the parties are cautioned that the failure to comply with the briefing requirements in the future may result in the imposition of sanctions. See NRAP 3C(n).