

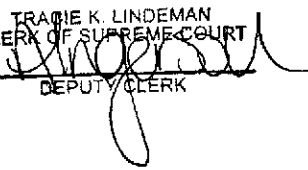
IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS VARGAS A/K/A LUIS
VARGASSAENZ,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63357

FILED

FEB 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Luis Vargas' post-conviction motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

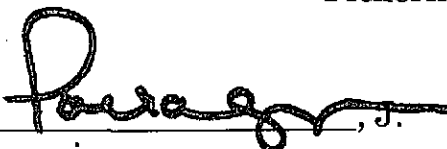
Vargas contends that the district court abused its discretion by denying his motion to withdraw his guilty plea because he was not informed that pleading guilty to attempted burglary would almost certainly result in deportation. A district court may grant a post-conviction motion to withdraw a guilty plea in order to "correct manifest injustice," NRS 176.165, which may be demonstrated by counsel's failure to properly inform his client of the immigration consequences of his plea, *Padilla v. Kentucky*, 559 U.S. 356, 368-69, (2010); *Rubio v. State*, 124 Nev. 1032, 1039-40, 194 P.3d 1224, 1228-29 (2008). "[We] will not overturn the district court's determination on manifest injustice absent a clear showing of an abuse of discretion." *Rubio*, 124 Nev. at 1039, 194 P.3d at 1229 (internal quotation marks omitted).


On appeal, Vargas claims that the attorney who represented him during plea negotiations "was aware of his immigration status, and realized that there were some potential immigration consequences," but

erroneously informed him that pleading guilty would not automatically subject him to deportation. But below, Vargas claimed that his attorney was unaware of his immigration status and never raised the subject of immigration consequences whatsoever. An appellant cannot change his theory underlying an assignment of error on appeal. *Ford v. Warden*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995). Even if this court wished to resolve this discrepancy, we would be unable to do so because Vargas did not provide transcripts of his guilty plea canvass or argument relating to his motion to withdraw his plea. See *Thomas v. State*, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (appellant is ultimately responsible for providing this court with portions of the record necessary to resolve his claims on appeal); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”). The record that has been provided indicates that counsel informed Vargas of the immigration consequences of his plea. We therefore conclude that Vargas fails to demonstrate that the district court abused its discretion by denying his motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Michael Villani, District Judge
Driggs Law Group
Don P. Chairez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk