

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY E. MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 64867

**FILED**

JUL 22 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

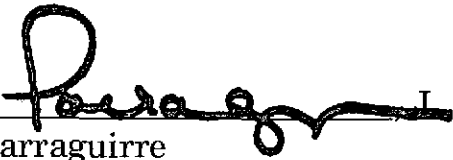
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of invasion of the home. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.


Appellant Anthony E. Martinez contends that the district court abused its discretion by denying his presentence motion to withdraw his plea because, despite stipulating to small habitual criminal treatment, he erroneously believed that he could receive probation. A district court may grant a presentence motion to withdraw a guilty plea for any substantial reason that is fair and just. *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001); *State v. Second Judicial Dist. Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969); see NRS 176.165. "To determine whether the defendant advanced a substantial, fair, and just reason to withdraw a plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently." *Crawford*, 117 Nev. at 721-22, 30 P.3d at 1125-26.


During argument on Martinez's motion, the district court read aloud from the guilty plea agreement and canvass, both of which clearly explained the relevant sentencing considerations, including that he was

ineligible for probation, and contradicted Martinez's contention. Counsel for Martinez conceded that the record contradicted the claim, but suggested that Martinez's history as a boxer may have contributed to memory impairment which impacted his ability to understand the proceedings. The district court judge, who had conducted the plea canvass and therefore had an opportunity to observe whether Martinez understood the agreement, rejected his assertion and concluded that the plea was knowingly and intelligently entered. Martinez fails to demonstrate that the district court abused its discretion. *See Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) ("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.'" (quoting *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986))). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
Parraguirre

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Douglas Smith, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk