

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65179

FILED

OCT 15 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 battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Anthony Bailey contends that the district court erred by denying his presentence motion to withdraw his guilty plea. A district court may grant a presentence motion to withdraw a guilty plea for any substantial reason that is just and fair. *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. "On appeal from a district court's denial of a motion to withdraw a guilty plea, [we] 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, 906 P.2d 706, 710 (1995) (internal quotation marks omitted).

First, Bailey argues that the district court erred by denying the motion to withdraw his guilty plea because the totality of the circumstances demonstrates that trial counsel failed to provide competent legal advice sufficient for Bailey to make an informed decision. We disagree. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts *de novo*. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). At an evidentiary hearing on the motion, Bailey testified that trial counsel discussed the settlement negotiations only once, presented the guilty plea agreement as the only possibility for resolving the case, did not present the entire guilty plea agreement to Bailey until a few minutes prior to his case being heard, did not discuss the advantages and disadvantages of accepting the negotiations, and insisted Bailey sign the guilty plea agreement before reviewing it with him. The district court found that Bailey understood the nature of the negotiations and that his testimony was not credible. The district court further found that trial counsel's testimony, in which she contradicted Bailey's account of events, was credible. Bailey fails to demonstrate that the district court's findings are not supported by substantial evidence or are clearly wrong, and the district court's conclusions are correct as a matter of law. *See Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004) (defendant bears the burden of proving

that the plea is invalid). Accordingly, the district court did not abuse its discretion by denying this claim.¹

Second, Bailey contends that the district court erred by denying the motion to withdraw his guilty plea because the district court failed to properly canvass him pursuant to the minimum requirements outlined in *Wilson v. State*, 99 Nev. 362, 366-67, 664 P.2d 328, 330-31 (1983).² Specifically, Bailey claims that there is nothing in the record to demonstrate that he was aware of the specific constitutional rights he was waiving or understood the nature and elements of the charge. Additionally, he argues that the district court failed to place facts on the record to support its finding that Bailey knowingly and intelligently pleaded guilty. We disagree.

¹To the extent that Bailey claims he was not provided all material discovery in order to make an intelligent determination regarding his plea, he fails to explain how any discovery matter affected his decision to plead guilty.


²In *Wilson*, we affirmed:

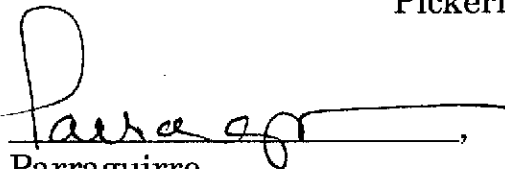
“that the record must affirmatively show the following: (1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, *i.e.*, the elements of the crime.”


99 Nev. at 367, 664 P.2d at 331.

In the written guilty plea agreement and during the plea canvass, Bailey confirmed for the district court that he read, understood, and discussed the plea agreement with his counsel. The district court inquired whether Bailey understood that he was waiving six valuable constitutional rights, all of which were contained within the guilty plea agreement, and Bailey answered affirmatively. Bailey further stated that he was not being forced to plead guilty and that he had not been threatened in order to have him plead guilty. He further acknowledged the minimum and maximum terms of imprisonment for the crime and the possible fine as well as the fact that sentencing is left to the district court and no one could promise him probation, leniency, or special treatment. After the district court read a factual basis for the crime, Bailey admitted to having committed the proscribed act. The record on appeal supports the district court's factual finding that the plea was freely and voluntarily entered, and we conclude that Bailey has failed to demonstrate that the district court abused its discretion by denying his presentence motion to withdraw his plea. *See Molina*, 120 Nev. at 190, 87 P.3d at 537. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Michael Villani, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk