

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLEOFUS THERGOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65541

FILED

JAN 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to an *Alford*¹ plea of attempted sexual assault. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant argues that the district court erred by denying his presentence motion to withdraw his plea because it was not knowingly and intelligently entered into due to the fact that he believed that he had prostate cancer and could not concentrate on or process the information that was presented to him.²

A defendant may move to withdraw a plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).


²Appellant also claims that he was unaware that he would be subject to lifetime supervision by entering his plea; however, appellant did not raise this claim in the court below and we decline to consider it on appeal. See generally *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

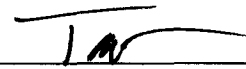
motion “for any substantial, fair, and just reason.” *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). “To determine whether the defendant advanced a substantial, fair, and just reason to withdraw a plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.” *Id.* 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, 905 P.2d 706, 710 (1995) (internal quotation marks omitted).


Appellant sought to withdraw from his *Alford* plea on grounds that he was laboring under concerns of a serious health condition and a desire to seek diagnosis and treatment for that condition when he entered his plea. He claimed that he posted bail and began the process of obtaining insurance approval and medical referrals after the plea canvass. And he asserted that he was led to believe that he would be allowed to remain on bail long enough to address his medical needs. The district court reviewed the entire record, conducted a hearing, and determined that appellant had not supported his argument with evidence that would justify granting the motion to withdraw the plea. The record on appeal supports the district court’s determination, and we conclude that appellant has failed to demonstrate that the district court abused its discretion in this regard. *See Molina v. State*, 120 Nev. 185, 190, 87 P.3d

533, 537 (2004) (defendant bears the burden of proving that plea is invalid). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kenneth C. Cory, District Judge
Edward B. Hughes, Esq.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk