

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICENTE WAYNE LADUA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65878

**FILED**

FEB 04 2015

TRAVIS K. LINDEMAN  
CLERK OF APPELLATE COURT  
BY: *Angerson*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of attempted battery causing substantial bodily harm. Eighth Judicial District Court, Clark County; James M. Bixler, 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 there were several different versions of the guilty plea agreement, the ultimate guilty plea agreement contained handwritten changes agreeing to felony treatment, the victim's name in the transcript did not match the victim's name in the guilty plea agreement, and the district court referenced page six of the guilty plea agreement when it should have referenced page five.

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

The district court reviewed the entire record, conducted a hearing, and determined that appellant did not appear confused during the canvass. Appellant was given an opportunity to talk with counsel before proceeding with the plea canvass. After discussing the plea agreement, and after the handwritten changes were made, appellant signed the plea agreement. Further, appellant was able to correctly identify the possible sentence he was facing, 12 to 48 months, which was the punishment if his crime was treated as a felony. 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.<sup>1</sup> *See Molina v. State*, 120 Nev. 185, 190, 87 P.3d


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<sup>1</sup>The other errors complained of regarding the victim's name and which page appellant's signature appeared did not affect appellant's knowing and voluntary entry of his plea.

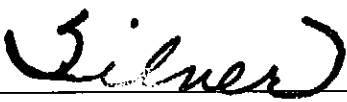


533, 537 (2004) (defendant bears the burden of proving that the plea is invalid). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. James M. Bixler, District Judge  
Dickinson Wright PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk