

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES GARNER, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65924

FILED

MAR 11 2015

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 first-degree murder with the use of a deadly weapon; discharging a firearm at or into a structure, vehicle, aircraft, or watercraft; attempted murder with the use of a deadly weapon; battery constituting domestic violence with the use of a deadly weapon resulting in substantial bodily harm; and possession of a firearm by a felon. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Appellant Charles Garner, III, argues that the district court abused its discretion in denying his 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 fair and just. *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; *see also State v. Freese*, 116 Nev. 1097, 1105-06, 13 P.3d 442, 448 (2000). In reviewing the district court's determination, we presume that the district court correctly

assessed the validity of the plea, and we will not reverse “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).

Garner contends that he mistakenly believed that his children would not testify if he pleaded guilty and, if he had known that his children could testify at the sentencing hearing, he would have proceeded to trial. We conclude that the district court did not abuse its discretion in denying Garner’s motion to withdraw his guilty plea. At the evidentiary hearing, counsel testified that they informed Garner, who was subject to the death penalty, that one of the benefits of pleading guilty is to spare witnesses the ordeal of having to testify and be cross-examined at trial and the penalty phase. Counsel testified that they spoke to Garner about the differences between a penalty hearing and a sentencing hearing and denied telling him that his children would not testify at the sentencing hearing if he pleaded guilty. The district court declined to allow Garner to withdraw his guilty plea because Garner received a substantial benefit in pleading guilty—the State agreed not to seek the death penalty in exchange for his guilty plea—and because withdrawal of the plea would subject Garner to the death penalty and make it more likely that his children would have to testify against him. We conclude that the district court did not abuse its discretion in deciding that Garner’s mistaken belief about whether his children could testify was not a “substantial, fair, and just reason” to withdraw his plea. *See Crawford*, 117 Nev. at 721, 30 P.3d at 1125. Further, considering the totality of the circumstances, we conclude that the district court’s plea canvass, coupled with the written plea agreement, demonstrates that the plea was knowingly and voluntarily entered. *See Freese*, 116 Nev. at 1105-06, 13 P.3d at 448.

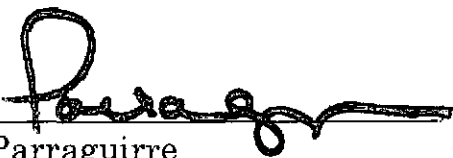
Next, Garner contends that his due process rights were violated when several victim impact speakers made unsupported factual allegations about his prior acts and one of the witnesses called him names. He contends that the district court failed to maintain decorum in the courtroom by allowing the speakers' testimony to exceed the scope of NRS 176.015(3) and that the State had an obligation to review the victim impact statements in advance to prevent this improper testimony. We disagree.


While the speakers' statements contained some inappropriate remarks, we conclude that the remarks did not render the sentencing hearing fundamentally unfair. See NRS 176.015(3)(b) (providing that victims may "[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution"). Notably, the district court asked one of the speakers to refrain from name-calling and explained the necessity to maintain decorum in the court. See *Dieudonne v. State*, 127 ___, ___, 245 P.3d 1202, 1208 (2011) (noting the district court's duty to maintain decorum during victim impact statements). There is no indication in the record that the district court based its sentencing decision on any inappropriate language in the victim impact statements. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (stating that reliance on impalpable or highly suspect evidence in sentencing is an abuse of discretion). Further, a "district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision." *Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). To the extent that Garner contends that the State failed to provide reasonable notice as to the contents of the impact statements, he has

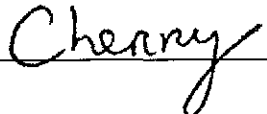
failed to demonstrate that he was prejudiced or deprived of an opportunity to rebut the impact statements. *See generally Buschauer v. State*, 106 Nev. 890, 894, 804 P.2d 1046, 1048-49 (1990) (discussing remedies for lack of reasonable notice that the victim impact statement would refer to specific prior acts).

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre J.


Douglas J.


Cherry J.

cc: Eighth Judicial District Court Dept. 20
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk