

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO DESHUN HARPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66226

FILED

FEB 24 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 battery resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant claims that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. He asserts that withdrawal was warranted because he was diagnosed with paranoid schizophrenia and other mental illnesses following entry of the plea; neither counsel, nor the court, were aware of this diagnosis when he entered the plea; and there were questions regarding his competency when he entered his plea.

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 conducted an evidentiary hearing at which appellant's mother, caregiver, prior counsel, and a defense investigator all testified. After considering the testimony, the plea canvass, and all records that had been submitted, including several competency evaluations, the district court found that appellant understood the criminal charges, the nature and purpose of the court proceedings, and the consequences of his plea. It further found that appellant was able to, and did in fact, aid and assist his counsel in the defense of his case. The district court concluded that appellant was competent at the time he entered his plea. See *Godinez v. Moran*, 509 U.S. 389, 398 (1993) (competency standard for pleading guilty is the same as competency standard for standing trial); *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) ("The test to be applied in determining competency 'must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" (quoting *Dusky v. United States*, 362 U.S. 402 (1960))). Finally, the district court concluded that the plea was entered knowingly and voluntarily. The record supports the district court's findings and conclusions.

We conclude that the district court did not abuse its discretion by denying appellant's presentence motion to withdraw his plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Elizabeth Macias Quillin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk