

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODNEY LAMAR MARSHALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67300

**FILED**

NOV 19 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 entered pursuant to a guilty plea of first-degree murder. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Rodney Marshall claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea because he was pressured to plead guilty and forgo proceeding to trial by defense counsels' failure to investigate his case and obtain a mitigation expert.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a motion for any substantial reason that is "fair and just," *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). To this end, the Nevada Supreme Court has recently ruled that "the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just," and it has disavowed the standard previously announced in *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001), which focused exclusively on whether the plea was


knowing, voluntarily, and intelligently made. *Stevenson v. State*, 131 Nev. \_\_\_, \_\_\_, 354 P.3d 1277, 1281 (2015).

Here, the district court conducted an evidentiary hearing and heard testimony that defense counsel expected Marshall's case to go to trial, counsel had reviewed the discovery and the results of a prior investigation, and counsel did not think further investigation was warranted based on the nature of the case. However, Marshall wanted the background of the State's witnesses investigated, so counsel hired an investigator. Marshall also wanted to know what kind of deal he could get, so counsel initiated negotiations with the State. Marshall was an active participant in the plea negotiations, two different guilty plea agreements were prepared, and counsel and Marshall went through the agreements multiple times. Marshall surprised counsel when he decided to accept a plea negotiation during a status check seven months before the trial date. Marshall did not express any concerns about the investigation or a mitigation expert while entering his guilty plea.

The record demonstrates the district court applied the correct standard for evaluating a presentence motion to withdraw a guilty plea, Marshall failed to demonstrate a fair and just reason for withdrawing his plea, and the district court did not abuse its discretion by denying Marshall's presentence motion. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk