

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAIME ADAN BARNES-ESPARZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67234

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, pursuant to a guilty plea, of first-degree kidnapping. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Jaime Adan Barnes-Esparza claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. 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 "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, Barnes-Esparza filed a presentence motion to withdraw his guilty plea, which alleged his counsel did not explain the consequences of his plea or the potential penalties, he did not understand the judicial process, he improperly had a Spanish-language interpreter even though he speaks English, and he was coerced in to pleading guilty by his counsel.


The district court conducted an evidentiary hearing and heard testimony from Barnes-Esparza's original counsel and from Barnes-Esparza. Counsel testified she spoke to Barnes-Esparza in English and with a Spanish-language interpreter at all of their discussions. Counsel testified Barnes-Esparza was pleased when he received a plea offer from the State. Counsel further testified she explained the potential penalties Barnes-Esparza faced and the ramifications of rejecting the State's plea offer. Counsel testified she repeatedly told Barnes-Esparza he should ask her questions if he had any trouble understanding the proceedings and she responded to his inquiries when he did so. The district court concluded counsel was credible and Barnes-Esparza's allegations lacked merit. The record also reveals that during Barnes-Esparza's plea canvass, he stated he understands Spanish better than English and that hearing proceeded with the use of a Spanish-language interpreter. In addition, Barnes-Esparza acknowledged at the plea canvass and in the guilty plea agreement that he did not plead guilty due to coercion or threats.

We therefore conclude Barnes-Esparza did not present a fair and just reason for withdrawing his guilty plea. *See generally Gardner v. State*, 91 Nev. 443, 446, 537 P.2d 469, 471 (1975) (defendant bears the

burden of proving he in fact was coerced). Accordingly, the district court did not abuse its discretion in this regard.

Having concluded Barnes-Esparza is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk