

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFERY MULHALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68633

FILED

MAR 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of establishing or possessing a financial forgery laboratory. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Jeffery Mulhall 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).

In his motion to withdraw his guilty plea, Mulhall alleged counsel was ineffective for failing to investigate, failing to explain the strengths and weaknesses of the evidence, failing to inform him of the consequences of the plea, failing to provide an adequate defense, and failing to ensure Mulhall understood the sentencing scheme.

The district court conducted an evidentiary hearing and made the following findings.¹ Mulhall entered his plea knowingly and voluntarily, he was properly and thoroughly canvassed, and the written plea agreement supports that he entered his plea voluntarily, knowingly, and intelligently. Further, counsel did not misadvise Mulhall regarding the minimum sentence he would serve.


Whether the plea was entered voluntarily, knowingly, and intelligently entered is no longer the correct standard for determining whether to allow a defendant to withdraw his plea. Because the district court applied an incorrect standard, we conclude the judgment of conviction must be vacated and we remand for consideration of Mulhall's

¹We note the district court erred by finding Mulhall's claim regarding counsel's failure to investigate was not properly raised in a motion to withdraw a guilty plea. *See Nollette v. State*, 118 Nev. 341, 348-49, 46 P.3d 87, 92 (2002).

motion under the standard set forth in *Stevenson*. If the district court determines Mulhall's motion lacks merit under *Stevenson*, it may reinstate the judgment of conviction. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Guymon & Hendron, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk