

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIUSSEPPE W. RUSSO, A/K/A
GIUSEPPE W. RUSSO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68446

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 possession of a firearm by a felon. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Giuseppe Russo 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, Russo alleged counsel was ineffective for failing to inform him of the collateral

consequences of his plea, his plea was rushed, and the district court improperly inserted itself in the plea negotiations. After hearing argument from the parties, the district court concluded "there is no legal basis for withdrawal of plea."

Whether there is a legal basis for withdrawal of the plea is not 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 Russo's motion under the standard set forth in *Stevenson*. If the district court determines Russo's motion lacks merit under *Stevenson*, it may reinstate the judgment of conviction. Accordingly, we

ORDER the judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹In light of this order, we decline to address Russo's other arguments on appeal.

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