

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA MARIE PARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69155

FILED

APR 20 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, pursuant to a guilty plea, of attempted burglary. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Relying on the Nevada Supreme Court's recent opinion in *Stevenson v. State*, 131 Nev. ___, 354 P.3d 1277 (2015), appellant Lisa Parks claims the district court applied the incorrect standard when denying her presentence motion to withdraw her guilty plea.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson*, 131 Nev. at ___, 354 P.3d at 1281. To this end, while this appeal was pending, the Nevada Supreme Court 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, and affirmed 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." *Stevenson*, 131 Nev. at ___, 354 P.3d at 1281.

The district court resolved Parks' presentence motion to withdraw her guilty plea before issuance of the *Stevenson* opinion. The district court reviewed the entire record and found Parks had fair notice of a lack-of-intent defense and her plea was freely and voluntarily entered with sufficient knowledge of that possible defense and, therefore, she failed to demonstrate a substantial, fair and just reason to withdraw the guilty plea. Because the district court made findings regarding the validity of Parks' plea, despite the fact Parks did not challenge the validity of her plea as a basis for withdrawing her plea, it appears the district court applied the *Crawford* standard when resolving her motion.

Although the *Crawford* standard was the approved standard at the time the district court resolved Parks' motion, as noted above, while this appeal was pending the Nevada Supreme Court disavowed the *Crawford* standard for determining whether a defendant presented a fair and just reason for withdrawing a plea before sentencing. *Id.* Additionally, pursuant to *Stevenson*, it appears a defendant no longer needs to demonstrate a "substantial" reason that is fair and just to withdraw a guilty plea before sentencing; rather, a district court may grant a presentence motion to withdraw a guilty plea "for any reason where permitting withdrawal would be fair and just." *Id.*

In light of *Stevenson* and because, based on the record before this court, we cannot conclude Parks failed to demonstrate a fair and just reason to withdraw her plea,¹ we vacate the judgment of conviction and


¹Parks alleged she obtained new evidence after entry of the plea that would permit her to present a meritorious defense to the original charge, and it appears she may have a meritorious defense based on that new evidence, see *State v. White*, 130 Nev. ___, ___, 330 P.3d 482, 485 (2014)


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remand this matter to the district court for reconsideration of Parks' motion. If the district court determines Parks' 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.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Eric Johnson, District Judge
Michael R. Pandullo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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(holding that "a person with an absolute right to enter a structure cannot commit burglary of that structure").

²In light of this order, we decline to address Parks' other claims on appeal.