

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DALLY TY PETTY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68116

**FILED**

JUN 22 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY J. Hendrich  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of unlawful use of a minor under 14 years of age in producing pornography or as a subject of sexual portrayal in performance and lewdness with a child under the age of 14. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Appellant Dally Ty Petty first argues the district court erred in denying his presentence motion to withdraw his 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 v. State*, 131 Nev. \_\_\_, \_\_\_, 354 P.3d 1277, 1281 (2015). To this end, the Nevada Supreme Court recently 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 knowingly, 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

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plea before sentencing would be fair and just.” *Stevenson*, 131 Nev. at \_\_\_, 354 P.3d at 1281.


In Petty’s presentence motion to withdraw his guilty plea, he alleged his guilty plea was invalid because he was under the influence of prescription hydrocodone when he entered his plea. The district court held a hearing regarding this issue and Petty’s counsel stated he knew Petty had a prescription for hydrocodone, but that Petty never exhibited signs that he could not understand the proceedings. Counsel also asserted that Petty was actively involved in the proceedings. In the guilty plea agreement, Petty acknowledged he was not under the influence of any drug that could impair his ability to comprehend or understand the guilty plea agreement or court proceedings. Petty also asserted at the plea canvass that he was not under the influence of drugs. The district court concluded Petty’s motion lacked merit and the record before this court reveals the totality of the circumstances demonstrate Petty did not have a fair and just reason to withdraw his guilty plea. We conclude the district court did not abuse its discretion in denying the motion. Accordingly, Petty is not entitled to relief for this claim.


Second, Petty argues the district court erred in denying a motion to withdraw as counsel. Petty asserts the attorney-client relationship had deteriorated and his counsel could not effectively advocate on his behalf. This court reviews a district court’s denial of defendant’s request to substitute counsel for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). In conducting our review, we consider the extent of any conflict, the adequacy of the district court’s inquiry, and the timeliness of a defendant’s motion. *Id.* at 968-69, 102 P.3d at 576.

Here, Petty's counsel filed a motion to withdraw from representing Petty in this matter. Counsel asserted after Petty entered his guilty plea and then reviewed the presentence investigation report, Petty had called counsel a liar, asserted counsel had not acted in his best interests, and wanted counsel to file motions that counsel believed to be frivolous. For those reasons, counsel requested to withdraw from representing Petty.

The district court conducted a hearing and discussed Petty's and counsel's concerns. The district court noted Petty was scheduled to be sentenced one week later. The district court explained to Petty that he would have the opportunity at the sentencing hearing to personally inform the district court of any issues Petty believed were necessary to discuss. Counsel then acknowledged that he could zealously advocate for Petty at the sentencing hearing and Petty asserted he had no further issues to discuss with the district court at that time. At the conclusion of the hearing, the district court denied the motion to withdraw as counsel. Based upon the record before this court, we conclude the district court did not abuse its discretion in this regard. Therefore, Petty is not entitled to relief for this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Thomas L. Stockard, District Judge  
The Law Office of Jacob N. Sommer  
Attorney General/Carson City  
Churchill County District Attorney/Fallon  
Churchill County Clerk