

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCELINO FLORES, A/K/A  
MARCELINO VASQUEZ-FLORES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69694

**FILED**

JUN 27 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Appellant Marcelino Flores claims the district court abused its discretion by denying his pretrial motion to withdraw his guilty plea because he entered his plea agreement to avoid federal prosecution unaware that federal prosecution was already underway.

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 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 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 plea of a guilty plea would be fair and just." *Stevenson*, 131 Nev. at \_\_\_, 354 P.3d at 1281.


In the court below, Flores argued he should be allowed to withdraw his guilty plea because the State was unable to fulfill its promise not to refer the instant case for federal prosecution as the federal government was already prosecuting charges arising from this case. The district court found it significant that the federal indictment was brought against Flores a week before he entered his guilty plea and the federal indictment did not seem to have a significant impact on Flores' decision to plead guilty. The court further found that Flores had entered his plea voluntarily and knowingly, and it concluded he had not presented a fair and just reason to withdraw the plea.

The totality of the circumstances does not support the district court's factual findings. Instead, the record demonstrates one of the primary reasons Flores accepted the plea negotiations was the State's promise not to refer his case for federal prosecution. The record does not indicate Flores knew the federal government was prosecuting charges arising from his case before he accepted the plea negotiations and presented them to the district court. Because the federal prosecution nullified the State's promise and prevented the State from performing in compliance with the spirit of the plea agreement, we conclude Flores advanced a fair and just reason for withdrawing his guilty plea. Accordingly, we

ORDER the judgment of the district court REVERSED AND  
REMAND this matter to the district court for proceedings to allow Flores  
an opportunity to withdraw his guilty plea.

  
\_\_\_\_\_, 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