

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO JOE CADENA, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70625

FILED

MAY 24 2017

ORDER OF AFFIRMANCE

BY *M. Leavitt*
MARIE LA BROWN
CLERK OF THE COURT
DEPUTY CLERK

Francisco Joe Cadena, III appeals from a conviction entered pursuant to a guilty plea of battery with the use of a deadly weapon.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Cadena asserts that, prior to sentencing, he made an oral motion to either set aside his guilty plea, or in the alternative to continue the sentencing so that he could file such a motion, both of which the district court erroneously denied by failing to apply the "fair and just" standard of *Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015).

However, the record reveals that, before the district court either granted or denied his oral motion, Cadena withdrew the motion and agreed to proceed to sentencing instead.² Whether Cadena's oral motion is

¹We do not recount the facts except as necessary to our disposition.

²THE COURT: Well, here -- do you want to proceed with sentencing?

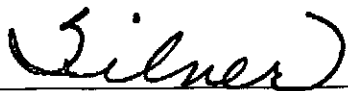
THE DEFENDANT: Yes ma'am. Let's not be difficult. Let's go ahead and get this over with please.


THE COURT: Okay. Any legal cause or reason why judgment should not be pronounced against you at this time?

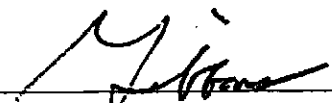
THE DEFENDANT: No.

characterized as a motion to withdraw the plea or as a motion for a continuance, Cadena failed to properly preserve the matter for appeal when he withdrew it before the district court could rule on it. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”).³ We therefore,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³We have considered Cadena’s remaining arguments and conclude they lack merit. First, Cadena fails to cite authority requiring the district court to appoint alternate counsel before deciding a motion to withdraw the plea. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”). Second, Cadena urges this court to expand the holding in *Cripps v. State*, 122 Nev. 764, 770-71, 137 P.3d 1187, 1191 (2006) to prohibit judicial participation in a motion to withdraw a guilty plea. But, given the standard articulated in *Stevenson*, we decline to do so. 131 Nev. at ___, 354 P.3d at 1281 (“the district court must consider the totality of the circumstance to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just”). Lastly, Cadena argues that the district court erred in imposing sentence, but fails to point to any evidence that the district court did not consider his individual circumstances or relied on highly suspect or impalpable information. See *Martinez v. State*, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998) (“The sentencing judge is accorded wide discretion in imposing a sentence; absent an abuse of discretion, this court will not disturb the district court’s determination on appeal.”).

cc: Hon. Michelle Leavitt, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk