

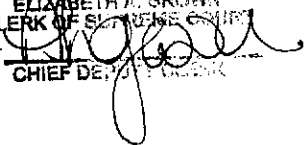
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAUL GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71886

FILED

FEB 14 2018

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Raul Gonzales appeals from a judgment of conviction. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

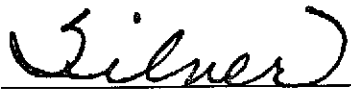
The district court convicted Gonzales of conspiracy to commit robbery and robbery pursuant to a guilty plea, adjudicated Gonzales a habitual criminal, and sentenced Gonzales to two concurrent prison terms of life without the possibility of parole. Gonzales filed a direct appeal challenging, among other things, the district court's denial of his presentence motion to withdraw his guilty plea. This court vacated the judgment of conviction and remanded the matter for an evidentiary hearing on the issue of whether "circumstances exist such that it would be fair and just to allow Gonzales to withdraw his guilty plea." *Gonzales v. State*, Docket No. 66615 (Order Vacating Judgment and Remanding, April 14, 2016). On remand, the district court conducted an evidentiary hearing and entered an order reinstating the judgment of conviction. This appeal follows.

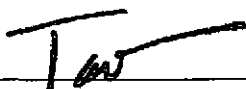
Gonzales claims the district court abused its discretion by denying his motion to withdraw his guilty plea because his decision to plead guilty was conditioned upon his immediate release from custody. However,


the district court made the following findings: Gonzales' guilty plea was not conditioned upon the actual timing of his release from custody. Although the parties contemplated Gonzales' release, they did not contemplate the timing of his release. Gonzales was released on his own recognizance in this case on December 20, 2013, and he was released on his own recognizance in his other case on December 24, 2013. Gonzales remained free from custody until he was arrested pursuant to an indictment warrant issued on January 31, 2014. Gonzales received the benefit of his plea bargain. And Gonzales failed to demonstrate a fair and just reason to justify withdrawing of his guilty plea.

The record demonstrates the district court applied the correct standard for resolving Gonzales' presentence motion to withdraw his guilty plea, *see Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015), and we conclude the district court did not abuse its discretion by denying Gonzales' motion, *see State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969) (The district court's ruling on a presentence motion to withdraw a guilty plea "is discretionary and will not be reversed unless there has been a clear abuse of that discretion."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk