

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SIDNEY EARL CARTHEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67933

FILED

APR 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant Sidney Carthen claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. This claim lacks merit.

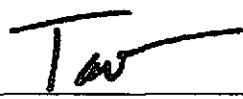
A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). "[T]he 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." *Id.*

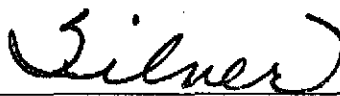
Here the district court conducted a hearing on the motion to withdraw the guilty plea at which both counsel and Carthen testified. The court found that Carthen's claims were belied by the record and, when considering the totality of the circumstances, determined Carthen failed to demonstrate a fair and just reason for withdrawing his plea. The record

supports the district court's findings, and we conclude the district court did not abuse its discretion by denying the motion to withdraw the guilty plea.¹ Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹To the extent Carthen claims this appeal should be dismissed without prejudice to permit him to relitigate his claims in a post-conviction petition for a writ of habeas corpus, we conclude such relief is not warranted. Further, to the extent Carthen requests this court to overrule *Molina v. State*, 120 Nev. 185, 87 P.3d 533 (2004), and hold that a defendant cannot raise a claim of ineffective assistance of counsel in a presentence motion to withdraw the guilty plea, we disagree that such a limitation on the presentence motion to withdraw the guilty plea is warranted. Moreover, even if we agreed that such a limitation was warranted, this court cannot overrule Nevada Supreme Court precedent.