

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LEE RAINEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70764

**FILED**

APR 19 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Appellant David Lee Rainey appeals from a judgment of conviction entered pursuant to a guilty plea of conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Rainey claims the district court erred in denying his presentence motion to withdraw his guilty plea. He argues the guilty plea was not entered knowingly, voluntarily, or intelligently because defense counsel was ineffective, there was confusion during the plea canvass, and he was under the influence of psychiatric medications which affected his ability to understand the nature and consequences of the 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). “On appeal from a district court’s denial of a motion to withdraw a guilty plea, [we] will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court’s determination absent a clear showing of an abuse

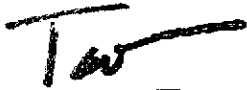
of discretion." *Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (internal quotation marks omitted).

After entering his guilty plea, Rainey sought to withdraw the plea on grounds it was entered improvidently, without the advice of counsel, and without understanding the nature of the charges, the effect of the plea, and the rights being waived. The district court appointed new counsel and new counsel filed a supplemental motion in which she argued defense counsel had not visited Rainey at the Clark County Detention Center, did not speak with Rainey over the telephone, and was unaware of Rainey's mental health history and treatment. The State opposed the motion, and the district court heard argument on the motion.

The district court reviewed the totality of the record and found defense counsel's performance did not fall below an objective standard of reasonableness. *See Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (setting forth the two-part test for ineffective assistance of counsel when the conviction is based on a guilty plea). The district court also found Rainey received a thorough plea canvass and there was no fair and just reason for allowing the plea to be withdrawn. The record supports the district court's factual findings, and we conclude Rainey failed to demonstrate the district court abused its discretion in denying his presentence motion to withdraw the guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Kathleen E. Delaney, District Judge  
Law Office of Monique A. McNeill  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk