

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DELVIN JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69081

**FILED**

**MAY 17 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 entered pursuant to a guilty plea of battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

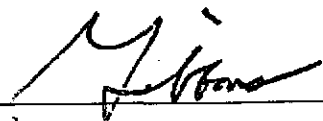
Appellant Delvin Johnson claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev. \_\_\_, \_\_\_, 354 P.3d 1277, 1281 (2015). To this end, the Nevada Supreme Court recently 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 knowing, 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 before sentencing would be fair and just.” *Stevenson*, 131 Nev. at \_\_\_, 354 P.3d at 1281.

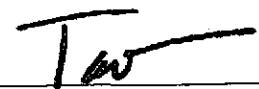
To the extent Johnson claims counsel did not effectively advise him about his case or possible defenses, did not effectively investigate


defense witnesses or theories, and told him, after accepting the plea agreement, that this was not a good deal, Johnson failed to support these claims with cogent argument or cites to relevant authority. We conclude Johnson failed to demonstrate the district court abused its discretion by finding he failed to identify a fair and just reason to withdraw his guilty plea.

To the extent Johnson claims counsel was ineffective for failing to obtain a video from the bar, Johnson fails to demonstrate the district court abused its discretion by concluding this was not a fair and just reason to withdraw his guilty plea. According to the record on appeal, counsel was appointed 9 days after the incident, two days after the surveillance video was destroyed. Further, it does not appear the video would have been helpful to the defense even if it had been recovered. While the altercation began at the bar, the victim and Johnson's ex-girlfriend left the bar and Johnson followed them. Johnson ultimately attacked the victim in an alley several blocks away. We conclude, the district court did not abuse its discretion in denying the motion, and we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk