

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGEL BERNE VILLICANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69082

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 conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.


Appellant Angel Villicana claims the district court erred 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.

Villicana claims he should have been able to withdraw his plea because he stopped taking his psychiatric medications months before entering his plea and because his plea counsel was ineffective for failing to get his medical records from the jail showing he had stopped taking his medications. Villicana fails to demonstrate a fair and just reason for withdrawing his plea. After an evidentiary hearing, the district court concluded counsel was credible when he testified Villicana did not appear unable to understand the proceedings. In fact, Villicana wrote counsel a 12-page letter outlining the charges, the possible defenses, and summarized conversations between Villicana and counsel. This indicates he understood the proceedings. Finally, he fails to demonstrate counsel was deficient for failing to obtain medical records from the jail given Villicana did not appear incompetent during their interactions. See *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Accordingly, the district court did not abuse its discretion by denying the motion to withdraw the guilty plea, 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