

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGEL RAFAEL LORENZANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77594-COA

FILED

FEB 11 2020

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

ORDER OF AFFIRMANCE

Angel Rafael Lorenzana appeals from a judgment of conviction entered pursuant to a guilty plea of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Lorenzana contends the district court abused its discretion when it denied his presentence motion to withdraw his guilty plea without conducting an evidentiary hearing. Lorenzana asserts an evidentiary hearing would have permitted him to address issues that were not initially raised in his motion and would have permitted the district court to consider the whole record of the case.

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. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, “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.” *Id.* at 603, 354 P.3d at 1281.

In the guilty plea agreement, Lorenzana agreed to enter a guilty plea in this case and in a separate criminal matter. At the plea canvass in this case, the parties informed the district court that the State also agreed not to refer Lorenzana for prosecution in federal court. Lorenzana entered his guilty plea in this case, but later refused to enter a guilty plea in the separate criminal matter. The State subsequently dismissed the charge in the separate criminal matter.

In his motion to withdraw his guilty plea, Lorenzana argued his guilty plea was not entered knowingly and voluntarily because the dismissal of the charge in the separate matter altered his circumstances and because the written plea agreement did not contain a provision concerning the State's promise to refrain from referring him for prosecution in federal court.

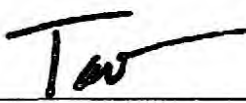
The district court conducted a hearing concerning Lorenzana's motion and heard argument by the parties. Following the argument, the district court found the dismissal of the separate charge simply meant that Lorenzana received a better bargain than he initially thought and the dismissal of that charge did not constitute a reason for withdrawal of his guilty plea in this case. The district court also found the State's agreement to refrain from referring Lorenzana for federal court prosecution was contained in the record and Lorenzana received the benefit of that portion of the agreement. Lorenzana also attempted to raise new claims that were not discussed in the motion to withdraw his guilty plea, but the district court declined to permit Lorenzana to raise new issues that he had not addressed in his written motion.

At the conclusion of the hearing, the district court found an evidentiary hearing was not necessary given the nature of Lorenzana's

claims and, based on the totality of the circumstances, Lorenzana failed to demonstrate a fair and just reason to withdraw his guilty plea. The record before this court supports the district court's decisions and we conclude the district court did not abuse its discretion by declining to consider claims that were not raised in Lorenzana's written motion. Therefore, Lorenzana has not demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea without conducting an evidentiary hearing. *See Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994) (reviewing the district court's denial of a motion to withdraw guilty plea for an abuse of discretion); *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk