

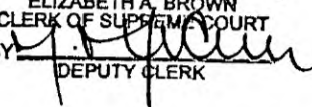
IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE ANGELO ROSENTHAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; THE HONORABLE MARY KAY
HOLTHUS, DISTRICT JUDGE; AND
THE HONORABLE JOSEPH HARDY,
JR., DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 89129

FILED

NOV 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION

This original petition seeks a writ of mandamus directing the district court to reinstate the guilty plea that petitioner previously entered pursuant to a guilty plea agreement.

A writ of mandamus may compel the performance of a legally required act or to cure a manifest abuse of discretion. NRS 34.160; *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). “A manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (quotation marks and alteration marks omitted). This court will not grant extraordinary relief to control the proper exercise of discretion, *State v. Eighth Jud. Dist. Ct. (Zogheib)*, 130 Nev. 158, 161, 321 P.3d 882, 884 (2014), nor to correct errors in judgment, *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680-81, 476 P.3d 1194, 1197 (2020).

Over the course of several pretrial hearings, petitioner George Angelo Rosenthal criticized and sought to replace trial counsel. After the district court denied the motion to dismiss counsel, Rosenthal participated in a settlement conference and pleaded guilty. At the sentencing and later hearings, Rosenthal repeatedly asked to withdraw the guilty plea, asserting that a conflict with counsel affected the decision to plead guilty. The State did not oppose withdrawal, and the district court granted Rosenthal's third request to withdraw the guilty plea and appointed new counsel. Nearly two years later, Rosenthal moved to reinstate the previously negotiated guilty plea, asserting that there was no legal basis to withdraw the guilty plea and the court's inquiry at the time was inadequate. The district court denied the motion. Rosenthal sought extraordinary relief, and the petition was transferred to the Court of Appeals. That court declined to grant relief. *Rosenthal v. Eighth Jud. Dist. Ct.*, No. 87099-COA, 2024 WL 358253, at *1 (Nev. Ct. App. Jan. 30, 2024) (Order Denying Petition). And this court denied review of that decision. *See Rosenthal v. Eighth Jud. Dist. Ct.*, No. 87099 (Nev. June 7, 2024) (Order Denying Petition for Review). Rosenthal then filed this writ petition challenging the district court's decision to allow withdrawal of the guilty plea without appointing conflict-free counsel.

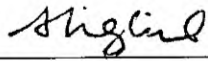
Rosenthal has not demonstrated that our intervention is warranted to reinstate the guilty plea. *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (providing that petitioner seeking extraordinary relief bears the burden of proving that intervention is warranted); *see Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982) (observing that the decision to consider a mandamus petition is within this court's discretion). Rosenthal cites no authority suggesting that the district court could—or indeed should—reinstate a

guilty plea withdrawn at the defendant's personal insistence. See *Armstrong*, 127 Nev. at 932, 267 P.3d at 780 (providing that a decision constitutes a manifest abuse of discretion when it is a clearly erroneous application of law). And our precedent states otherwise. When an accused withdraws a guilty plea, courts treat the plea as if it had never been entered. *In re Tiffée*, 137 Nev. 224, 226, 485 P.3d 1249, 1252 (2021); cf. *Parker v. State*, 100 Nev. 264, 265-66, 679 P.2d 1271, 1272-73 (1984) (ordering reinstatement of guilty plea that was erroneously withdrawn by counsel over defendant's objection). Thus, there is nothing to reinstate.

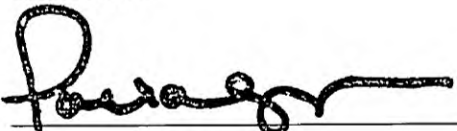
Nor has Rosenthal established that granting the repeated requests to withdraw from the negotiated plea, without first appointing new counsel, was an arbitrary and capricious exercise of discretion. Rosenthal insisted that the relationship with counsel was irreconcilably broken to the extent that counsel's continued representation constituted a conflict of interest. Rosenthal further maintained that the conflict preceded and influenced the decision to plead guilty as shown by Rosenthal's desire to withdraw the guilty plea over counsel's advice. In other words, both of Rosenthal's requests—for new counsel and to withdraw the guilty plea—were based on the complaints about the relationship with counsel. Once the district court credited those complaints, it understandably acceded to Rosenthal's request to withdraw the guilty plea. See *Sunseri v. State*, 137 Nev. 562, 564, 495 P.3d 127, 131 (2021) (considering the totality of the circumstances to determine “whether withdrawal of a guilty plea would be fair and just”). Furthermore, Rosenthal's repeated demands that the district court make the purported error of which he now complains estops him from disputing it. See, e.g., *Carter v. State*, 121 Nev. 759, 769, 121 P.3d

592, 599 (2005) (“A party who participates in an alleged error is estopped from raising any objection on appeal.”). Accordingly, we

ORDER the petition DENIED.


_____, J.
Stiglich


_____, J.
Herndon


_____, J.
Parraguirre

cc: Hon. Joseph Hardy, Jr., District Judge
Hon. Mary Kay Holthus, District Judge
Wright Marsh & Levy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk