IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ALBERTO GARCIA-PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89359-COA

ORDER OF AFFIRMANCE

Jose Alberto Garcia-Perez appeals from a judgment of conviction, entered pursuant to a no contest plea, of sexual assault.[1] First Judicial District Court, Carson City; James Todd Russell, Judge.

First, Garcia-Perez argues the district court abused its discretion by denying his second 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. 598, 604, 354 P.3d 1277, 1281 (2015). We review the district court's decision on a motion to withdraw a guilty plea for an abuse of discretion. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[1]A no contest plea is equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

On appeal, Garcia-Perez argues "[a]s evidenced by his mental health and intellectual issues as established in the first plea and withdrawal, in addition to the district court interjection into the plea negotiations, it is clear this was not a knowing and voluntary plea."[2] Garcia-Perez also contends that his arguments for withdrawal were supported by his mother's testimony at sentencing that he was in special-education classes and did not graduate high school.

Garcia-Perez failed to provide this court with a copy of the second presentence motion the district court denied.[3] Thus, we presume the missing presentence motion to withdraw his guilty plea supports the decision of the district court that Garcia-Perez did not demonstrate a fair and just reason to withdraw his plea. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007); *see also* NRAP 30(b)(3) (requiring an appellant to include in his appendix "any . . . portions of the record necessary to determination of issues raised in [the] appeal").

---

[2]Garcia-Perez does not allege what his mental health and intellectual disabilities were or how they affected his ability to enter his no contest plea.

[3]We note this is the third case this court has considered in the last six months where appellant's counsel, in her representation of indigent defendants, has failed to provide pertinent portions of the record on appeal. *See Tom v. State*, No. 87585-COA, 2025 WL 2170412 (Nev. Ct. App. July 30, 2025) (Order of Affirmance); *Mahmoud v. State*, No. 88596-COA, 2025 WL 945615 (Nev. Ct. App. Mar. 24, 2025) (Order of Affirmance). We remind counsel it is appellant's burden, and her burden as appellant's representative, to provide this court with a complete record with which to review his claims. *See* NRAP 30(b)(3).

Therefore, we conclude the district court did not abuse its discretion by denying the second presentence motion to withdraw guilty plea.

Second, Garcia-Perez argues the district court improperly participated in the plea negotiation process when it twice reiterated the possible penalty for going to trial as compared to the possible penalty for pleading guilty. After re-arraigning Garcia-Perez on the third-amended information, which included six counts of sexual assault and one count of sexual assault on a minor under the age of 16, Garcia-Perez's counsel stated that Garcia-Perez indicated he was going to take the State's offer to plead to one count of sexual assault. The district court noted Garcia-Perez was facing up to 85 years to life in prison if he did not take the deal. The district court then stated it wanted Garcia-Perez to understand that the deal was for one count of sexual assault and "you understand you go from possibility of parole after 85 years versus possibility of parole after only ten years?" Thereafter, the district court ended the hearing and allowed Garcia-Perez to discuss the plea agreement further with counsel. Later that same day, Garcia-Perez returned and entered his plea to one count of sexual assault.

Nevada has created a brightline rule "prohibiting any judicial participation in the plea negotiation process with one exception: the judge may indicate whether he or she is inclined to accept a sentencing recommendation of the parties." *Cripps v. State*, 122 Nev. 764, 772-73, 137 P.3d 1187, 1192-93 (2006). "[A]ny discussion of the penal consequences of a guilty plea as compared to going to trial is inherently coercive, no matter how well-intentioned." *United States v. Cano-Varela*, 497 F.3d 1122, 1133 (9th Cir. 2007) (quotation marks omitted). We conclude the district court's

comments regarding the penal consequences of going to trial as opposed to taking the deal may have violated the brightline rule. However, because Garcia-Perez failed to provide this court with the second presentence motion and the record provided on appeal does not demonstrate this claim was preserved below, it is not clear whether this claim would be subject to harmless error analysis. *Cripps*, 122 Nev. at 771, 137 P.3d at 1192 (holding that a violation of the rule is subject to harmless error analysis and that such an analysis requires a reviewing court to determine "whether the district court's [erroneous participation] may reasonably be viewed as having been a material factor affecting the defendant's decision to plead guilty" and the burden is on the appellant to establish that any reversible error occurred).

Even assuming the alleged error was preserved below, we conclude that the alleged error was harmless because Garcia-Perez fails to demonstrate the statements by the district court were material to his decision to plead guilty. On appeal, Garcia-Perez first argues the district court's statements were material because "the court improperly interjected itself into the plea negotiations" by giving a warning about a potential death penalty sentence and because the court made other statements about the plea deal and negotiations. But Garcia-Perez was not facing the death penalty and the asserted warning and other statements were not actually made by the district court in this case. Thus, this argument fails to demonstrate Garcia-Perez's decision to plead guilty was materially based on the district court's statements.

Garcia-Perez also argues the district court's statements were material to his decision because the district court's statements indicated that the district court would impose the maximum sentence if Garcia-Perez chose to go to trial. The district court's statements in the transcript from the hearing about the possible penalty if Garcia-Perez went to trial do not specifically state that the district court would impose the maximum sentence. Moreover, at the time the district court made the statements regarding the possible penalty, Garcia-Perez had already indicated he wanted to enter the plea agreement and therefore Garcia-Perez cannot demonstrate how such statements induced him to enter a plea. Further, Garcia-Perez was given additional time to discuss the plea with counsel and indicated during the thorough plea canvass that he was not coerced into pleading guilty. Therefore, Garcia-Perez fails to demonstrate his decision to plead guilty was materially based on the district court's statements. Thus, we conclude Garcia-Perez is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: First Judicial District Court, Department 1
Law Office of Betsy Allen
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk