

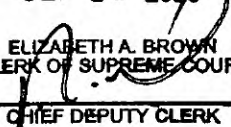
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW LYNCHGARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89763-COA

FILED

SEP 29 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Andrew Lynchgarcia appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted lewdness with a minor under the age of 14. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Lynchgarcia argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. He claims he presented a fair and just reason to withdraw his plea because, based on the totality of the circumstances, he did not understand the consequences of his plea. Specifically, Lynchgarcia contends he has mental health issues and intellectual difficulties. Lynchgarcia also argues he did not understand he had a viable defense to the charges in that he could have suppressed or otherwise diminished his confession to the police.

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). A claim that a guilty plea was not entered knowingly and voluntarily can be a fair and just reason to withdraw a guilty plea. *See Stevenson*, 131 Nev. at 603, 354 P.3d at 1280-81 (holding

that the range of claims permissible to be raised in a motion to withdraw a guilty plea are more diverse than just whether the plea was entered knowingly and voluntarily). A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). 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.” *Stevenson*, 131 Nev. at 603, 354 P.3d at 1281. We give deference to the district court’s factual findings if they are supported by the record, *id.* at 604, 354 P.3d at 1281, and we review the district court’s decision on a motion to withdraw a guilty plea for an abuse of discretion, *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

After holding an evidentiary hearing and considering the pleadings and the competency evaluation records, the district court found Lynchgarcia failed to demonstrate a fair and just reason to withdraw his plea. The district court acknowledged Lynchgarcia had mental health issues and intellectual difficulties<sup>1</sup> but found he understood the evidence, including the strengths and weaknesses of his case. The district court also found Lynchgarcia understood the consequences of his plea. Thus, the district court found that his plea was entered knowingly, voluntarily, and

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<sup>1</sup>About a year before Lynchgarcia entered his guilty plea, he was found incompetent to stand trial. After competency restoration treatment, he was found competent.

intelligently. We conclude these findings are supported by the record provided on appeal.<sup>2</sup>

At the evidentiary hearing on the motion to withdraw, counsel testified Lynchgarcia appeared to understand the proceedings and was retaining information much better than he was prior to competency restoration treatment. She also testified that she explained to Lynchgarcia her proposed defense for trial, which included attacking his confession by retaining an expert regarding false confessions. Further, she testified Lynchgarcia actively participated in the plea negotiations by suggesting potential plea offers for her to offer to the State. Lynchgarcia did not testify at the evidentiary hearing. Given counsel's testimony and the thorough plea canvass by the district court, we conclude the district court did not err by finding Lynchgarcia failed to demonstrate a fair and just reason for withdrawing his plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

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

  
\_\_\_\_\_, J.  
Westbrook

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<sup>2</sup>Lynchgarcia did not provide his competency records on appeal. Thus, we presume the records support the decision of the district court. See *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); cf. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

cc: Hon. Kathleen E. Delaney, District Judge  
Wright Marsh & Levy  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk