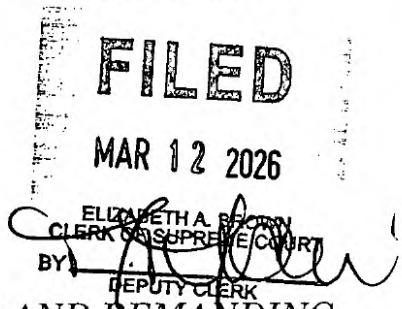
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMON VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90977-COA



ORDER AFFIRMING IN PART, VACATING AND REMANDING

Ramon Valencia appeals from a judgment of conviction, entered pursuant to a guilty plea, of coercion. Second Judicial District Court, Washoe County; Egan K. Walker, Chief Judge.

Valencia argues the district court improperly considered his immigration status at sentencing. Because Valencia did not object to the district court's comments about his immigration status below, he forfeited the right to assert this error on appeal. We will only consider correcting forfeited error where an appellant demonstrates plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 52, 412 P.3d 43, 48, 49 (2018). To demonstrate plain error, an appellant must show that: "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Id.* at 50, 412 P.3d at 48.

Generally, a district court "is accorded wide discretion in imposing a sentence," which allows it "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant." *Martinez v. State*, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998). A district court violates a defendant's due process rights if it bases its sentencing decision, in part, on the defendant's

26-11558

nationality, ethnicity, or status as an illegal immigrant. *Id.* at 738, 961 P.2d at 145. However, a defendant's immigration status may be considered for the limited purpose of deciding whether to grant probation. *Ruvalcaba v. State*, 122 Nev. 961, 965, 143 P.3d 468, 471 (2006).

We conclude Valencia has not demonstrated error plain from the record affecting his substantial rights. Valencia was the first to bring up his immigration status at sentencing in an attempt to argue for probation. Specifically, he argued that the district court should grant him probation and give him a sentence of credit for time served or 90 days flat in the jail since he was likely to be deported. Thus, Valencia invited any alleged error. *Chadwick v. State*, 140 Nev. 104, 546 P.3d 215, 227 (Ct. App. 2024) (holding that, under the invited error doctrine, "a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit" (internal quotation marks omitted)). Further, the district court only discussed Valencia's immigration status in response to Valencia's argument that he had stayed out of trouble during the time he absconded.[1] And the district court did not indicate it was sentencing Valencia based on his immigration status. Therefore, we conclude Valencia is not entitled to relief on this claim.

Next, Valencia contends the district court erred by denying his oral motion for the appointment of conflict-free counsel for the purpose of filing a presentence motion to withdraw the guilty plea. Valencia argues current counsel had a conflict of interest because the Washoe County Public Defender's office represented Valencia when he entered his plea, Valencia wanted to raise a claim of ineffective assistance of counsel in his

---

[1]Valencia absconded for nearly 17 years after pleading guilty in this case.

presentence motion to withdraw the guilty plea, and current counsel also worked for the Washoe County Public Defender's office.

Valencia pleaded guilty in 2008 but failed to appear for his sentencing hearing. He absconded for nearly 17 years. When he first appeared before the district court in 2025, Valencia's current counsel informed the district court that Valencia wanted to file a motion to withdraw his plea and that conflict-free counsel is usually appointed. The district court told Valencia that it was not going to consider any oral motions and that he needed to put his motion in writing. Valencia then filed a written motion to withdraw his plea where he challenged, in part, his plea counsel's performance. The State responded, and the district court denied the motion without conducting an evidentiary hearing or appointing new counsel.

A hearing on a motion to withdraw a guilty plea is a critical stage of litigation, and a defendant therefore has a right to counsel at the hearing. *Beals v. State*, 106 Nev. 729, 731, 802 P.2d 2, 4 (1990). The right to counsel necessarily implies the right to effective assistance of counsel. *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997). Counsel is not effective when their performance is deficient and that deficiency results in prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, (1984). We presume a defendant has been so prejudiced when counsel has an actual conflict that has an adverse effect on their performance, such as where counsel is in a position of divided loyalties. *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). Here, we conclude Valencia's counsel was in a position of divided loyalties.

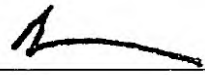
Valencia made an oral motion for the appointment of conflict-free counsel because the Washoe Public Defender's office had represented

him at the time he entered his plea and continued to represent him when he wanted to withdraw that plea. Valencia's written motion to withdraw his plea was, in part, based on receiving ineffective assistance from his plea counsel. Valencia's plea counsel and his current counsel worked for the same office. By requiring current counsel to continue representing Valencia on the motion to withdraw his guilty plea, the district court placed current counsel in the untenable position of having to argue their colleague's ineffectiveness, which in turn placed counsel in direct conflict with Valencia. *Cf. United States v. Morris*, 259 F.3d 894, 899 (9th Cir. 2001) (concluding counsel would have an actual conflict of interest in arguing his own ineffectiveness in connection with a motion to withdraw guilty plea); *United States v. Del Muro*, 87 F.3d 1078, 1080 (9th Cir.1996) (holding that requiring trial counsel to prove his own ineffectiveness creates an inherent conflict of interest that deprives the defendant of his Sixth Amendment right to effective assistance of counsel); *see also* RPC 1.7(1)(a)(2) (stating a lawyer shall not represent a client if there is a "significant risk that the representation . . . will be materially limited . . . by a personal interest of the lawyer"); RCP 1.10(a) (discussing the imputation of conflicts of interest to other lawyers within a firm). Thus, we conclude the district court abused its discretion by not appointing conflict-free counsel to represent Valencia during the pendency of his motion to withdraw his guilty plea.

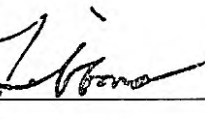
Therefore, we vacate the judgment of conviction and remand this matter for the district court to appoint conflict-free counsel to represent Valencia on the presentence motion to withdraw his guilty plea. After appointment of conflict-free counsel, and any further litigation on the motion, the district court shall either grant Valencia's motion and allow him to withdraw his guilty plea and litigate his criminal case, or it shall deny

his motion and re-enter the judgment of conviction, effective the date of the filing of the re-entered judgment of conviction. *Cf. Goad v. State*, 137 Nev. 167, 184-85, 488 P.3d 646, 661-62 (Ct. App. 2021) (concluding that reinstatement of the judgment of conviction is warranted after the appellate court vacates and remands if the district court determines that no relief is warranted based on the remand). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Egan K. Walker, Chief Judge
Washoe County Public Defender
Washoe County District Attorney
Attorney General/Carson City
Washoe District Court Clerk