

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE GASCON A/K/A JOSE VALLEJO  
A/K/A JOSE VALLEJO-GASCON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39807

FILED

DEC 13 2002

ORDER OF AFFIRMANCE

JANET M. 10/24  
CLERK OF SUPREME COURT  
S. J. RICHARDS  
CLERK

This is an appeal from a judgment of conviction, pursuant to an Alford plea,<sup>1</sup> of one count of attempted trafficking in a controlled substance.<sup>2</sup> Prior to sentencing, appellant Jose Gascon filed a motion to withdraw his guilty plea in the district court. The State opposed the motion. The district court conducted a hearing and denied Gascon's motion. The district court then sentenced Gascon to serve a prison term of 30-90 months; he was given credit for 494 days time served.

Gascon contends the district court erred in denying his presentence motion to withdraw his guilty plea. Gascon argues that his plea was not freely and voluntarily given because: (1) he was not competent; (2) counsel coerced him into signing the plea agreement; (3) he

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<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>The initial criminal complaint charged Gascon with four counts of attempted murder with the use of a deadly weapon, three counts of battery with the use of a deadly weapon, and one count each of trafficking in a controlled substance and possession of a controlled substance with the intent to sell.

was unable to read the plea agreement because he did not have his reading glasses; and (4) he did not understand the sentencing consequences of his plea. Gascon wishes to withdraw his plea and stand trial on the original charges. We conclude that Gascon is not entitled to relief.

“A district court may, in its discretion, grant a defendant’s [presentence] motion to withdraw a guilty plea for any ‘substantial reason’ if it is ‘fair and just.’”<sup>3</sup> To determine whether a defendant advanced a substantial, fair, and just reason to withdraw a guilty plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.<sup>4</sup> On appeal from the district court’s determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court’s determination absent a clear showing of an abuse of discretion.<sup>5</sup> The burden is on the defendant to demonstrate that his guilty plea was not entered knowingly and intelligently.<sup>6</sup>

We conclude that the district court did not abuse its discretion in denying Gascon’s presentence motion to withdraw his guilty plea.

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<sup>3</sup>Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

<sup>4</sup>See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

<sup>5</sup>See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

<sup>6</sup>See id.

Gascon's argument that his plea was not freely and voluntarily entered is belied by the record and without factual support.<sup>7</sup> Initially, we note that Gascon concedes that he understood the plea negotiations, and that the written plea agreement memorandum in its entirety was read to him in Spanish. Gascon has not provided any documentation or medical reports in support of his contention that he was incompetent at the time he entered his plea. And to the contrary, after an approximately four-month stay at Lake's Crossing, Gascon was unanimously deemed competent by the medical staff. Further, Gascon's unsubstantiated allegation that counsel tricked and bullied him into signing the plea agreement is devoid of support in the record.

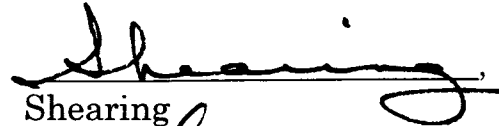
Finally, Gascon's contention that he did not understand the consequences of his plea is also belied by the record. First, Gascon alleges that it was his understanding that he would receive probation. Alternatively, Gascon alleges that he understood his sentence would be the statutory minimum. The written plea memorandum, however, expressly states that "[t]he Defendant agrees not to ask for probation at rendition of sentence." Further, at his plea canvass, Gascon confirmed that he understood the plea agreement and its consequences, and, in fact, the transcript of the hearing indicates that the district court additionally and accurately informed Gascon about the potential sentence. Therefore, we conclude that Gascon has not met his burden of demonstrating that his plea was not entered knowingly, freely and voluntarily.


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<sup>7</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Having considered Gascon's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.<sup>8</sup>

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Joseph T. Bonaventure, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk

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<sup>8</sup>Although this court has elected to file the appendix submitted by appellant, we note that it does not comply with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2); NRAP 30(c); NRAP 32(a). Specifically, the appendix includes several documents not file-stamped by the district court clerk in violation of NRAP 30(c)(1). Further, appellant's references in the fast track statement to pages of the appendix are entirely inaccurate in violation of NRAP 3C(e)(2). Counsel for both parties are cautioned that failure to comply with the requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).