IN THE SUPREME COURT OF THE STATE OF NEVADA

IGNACIO MACIAS BARAJAS A/K/A IGNACIO BARAJAS MACIAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40351

FILED

JAN 28 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of level-one trafficking in a controlled substance (Count I), level-two trafficking in a controlled substance (Count II), and level-three trafficking in a controlled substance (Count III). The district court sentenced appellant Ignacio Macias Barajas to serve concurrent prison terms of 12 to 36 months for Count I, 24 to 84 months for Count II, and 10 to 25 years for Count III.

Barajas contends that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea. In particular, Barajas contends that, in reviewing his motion, the district court applied the wrong standard by assessing the constitutional validity of Barajas' guilty plea, rather than merely considering whether his reason for withdrawing his plea was "fair and just." We conclude that Barajas' contention lacks merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea prior to sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.[1] A

[1]State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

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defendant has no right, however, to withdraw his plea merely because he moves to do so prior to sentencing or the State fails to establish actual prejudice.[2] Rather, in order to show that the district court abused its discretion in denying a presentence motion to withdraw a guilty plea, the defendant has the burden of showing that his plea was not entered knowingly and intelligently.[3] In reviewing a ruling on a presentence "motion to withdraw a guilty plea, this court '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.'"[4]

In the instant case, the district court's finding that Barajas entered a knowing and voluntary plea is supported by substantial evidence. At the plea canvass, the district court advised Barajas of the constitutional rights he was waiving in entering a guilty plea, the elements of the charged offenses, and the direct consequences resulting from the plea. Barajas admitted that he committed the charged offense and represented to the district court that he wanted to plead guilty, rather than have the jury, which was already impaneled and had heard evidence in the case, decide his guilt or innocence. Therefore, Barajas' claims that he was pressured into pleading guilty and did not understand what he was

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[2]See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

[3]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[4]Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368); Hubbard, 110 Nev. at 675, 877 P.2d at 521.

"answering to" by pleading guilty are belied by the record.[5] Accordingly, the district court did not abuse its discretion in denying Barajas' presentence motion to withdraw.

Having considered Barajas' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[5]Barajas also contends that the district court abused its discretion by denying his motion to withdraw his plea without considering the entire record. We reject Barajas' contention. Because Barajas' claims about his guilty plea were belied by the record of the plea canvass, the district court did not abuse its discretion in relying on that record to deny Barajas' motion without conducting an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).