

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS E. GUARDADO A/K/A LUIS E.
GUARADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40719

FILED

DEC 23 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14 years. Appellant Luis E. Guardado was initially arrested and charged with six counts of lewdness with a child under the age of 14 years for conduct directed towards his girlfriend's six-year-old granddaughter. The district court sentenced appellant Luis E. Guardado to serve a prison term of life with the possibility of parole after 10 years, and ordered him to pay \$750.00 in restitution.¹

Guardado's sole contention is that the district court erred in denying his presentence motion to withdraw his guilty plea. Guardado argues that his guilty plea was not knowingly and voluntarily entered because he received ineffective assistance of counsel, and without a Spanish-language interpreter at his arraignment, he was unable to fully understand the nature and consequences of his guilty plea. Guardado correctly cites to Ton v. State for the proposition that a criminal defendant has a "due process right to an interpreter at all crucial stages of this

¹According to the transcript of the sentencing hearing, Guardado's criminal history included a sexual assault of a minor boy which he ultimately negotiated down to an open or gross lewdness misdemeanor.

criminal process . . . if that defendant does not understand the English language.”² Nevertheless, we conclude that Guardado’s contentions are without merit.

“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.’”³ “To determine whether the 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.”⁴ The district court “has a duty to review the entire record to determine whether the plea was valid. . . . [and] may not simply review the plea canvass in a vacuum.”⁵

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.⁶ 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

²Ton v. State, 110 Nev. 970, 971, 878 P.2d 986, 987 (1994).

³Woods 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.

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

⁵Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁶NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225, n.3 (1984)).

determination absent a clear showing of an abuse of discretion.⁷ If the motion to withdraw is based on a claim that the guilty plea was not entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.⁸

We conclude that the district court did not abuse its discretion in denying Guardado's presentence motion to withdraw his guilty plea. The district court properly determined that Guardado did not substantiate his claim that his guilty plea was not voluntarily and knowingly entered. Our review of the record reveals that an interpreter was present when Guardado waived his right to a preliminary hearing in the justice court. At the hearing in the justice court, the negotiations were stated on the record and accurately reflected what Guardado pleaded guilty to, including his ultimate sentence of 10 years to life. The justice court asked Guardado on three separate occasions if he wanted to plead guilty and if he understood the consequences of waiving his right to a preliminary hearing. Each time Guardado responded in the affirmative. At the first arraignment hearing, an interpreter was present to assist Guardado, and the district court granted the defense a one-week continuance in order to have the formal written plea agreement translated for him into Spanish.

When the arraignment resumed, the following exchange took place:

THE COURT: Do you understand and read and write the English language?

GUARDADO: If you speak very slow I can understand.

⁷Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

⁸See id.

THE COURT: Do you need an interpreter?

GUARDADO: It would be easier.

...

DEFENSE COUNSEL: Your Honor, I've represented him for a long time. I think he understands.

...

THE COURT: Mr. Guardado [sic], do you need an interpreter? Could you understand?

GUARDADO: I can go ahead without.

THE COURT: Now, if you don't understand something that's been said, you raise your hand and signal in some way, and I will repeat or explain what I have said; do you understand?

GUARDADO: Yes, sir.

Thereafter, the district court fully canvassed Guardado regarding his guilty plea and its consequences. Upon inquiry, Guardado informed the district court that his plea was freely and voluntarily given, that he read, signed, and understood the guilty plea agreement, and that he did not have any questions. Guardado also informed the district court that he understood that the matter of sentencing remained within the district court's discretion, and that he believed the plea negotiations were in his best interest. The district court was finally advised by Guardado, defense counsel, and the State about the factual basis for his plea.

According to the district court minutes,⁹ the district court denied the motion, concluding that the plea canvass was thorough and


⁹Neither party has provided this court with the transcript of the hearing on Guardado's motion to withdraw his guilty plea. See NRAP 30 (requiring inclusion in appendix of matters essential to the determination of issues presented on appeal); Greene v. State, 96 Nev. 555, 558, 612 P.2d

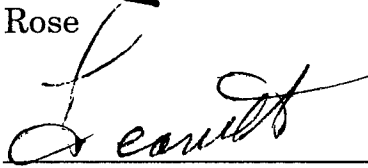
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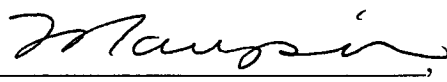
that Guardado was asked several times if he understood the proceedings. Each time, Guardado responded in the affirmative. The minutes reflect that Guardado stated that the plea agreement was read to him. Evidence was presented indicating that Guardado had the ability to understand and speak English. Guardado's attorneys noted that they always communicated with him in English, and the victim informed the district attorney that Guardado communicated with her in English. Additionally, a letter attached as an exhibit to Guardado's motion mentioned that Guardado's sons spoke to him only in English. We also note that it is clear from the record that Guardado was not rushed into entering into a guilty plea. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion in denying Guardado's presentence motion to withdraw his guilty plea.

Having considered Guardado's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

... continued

686, 688 (1980) ("The burden to make a proper appellate record rests on appellant.").

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk