

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESAUL CARDENAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41630

FILED

JAN 25 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On July 8, 2003, the district court convicted appellant Esaul Cardenas, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen years. The district court sentenced Cardenas to two concurrent life terms in the Nevada State Prison with the possibility of parole after ten years.

Cardenas pleaded guilty to two counts of lewdness with a child under the age of fourteen. Prior to sentencing, Cardenas filed a motion to withdraw his guilty plea. The district court denied Cardenas' motion and subsequently imposed sentence. On appeal, Cardenas argues that the district court erred in denying his motion without conducting an evidentiary hearing to determine whether his plea was voluntary because he is actually innocent of the offenses of which he was convicted.

"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>1</sup> In considering whether a defendant has "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>2</sup> 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."<sup>3</sup> "A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently."<sup>4</sup> In reviewing 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>

Based on our review of the record, we conclude that Cardenas did not demonstrate a fair and substantial reason to withdraw his guilty plea. In the written plea agreement, Cardenas acknowledged that by pleading guilty he admitted to the facts supporting the elements of the charged offenses, that he understood the consequences of his plea, and that he understood the waiver of his rights. He further acknowledged that

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<sup>1</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>2</sup>Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

<sup>3</sup>Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

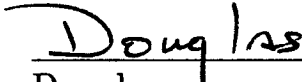
<sup>4</sup>Crawford, 117 Nev. at 722, 30 P.3d at 1126.

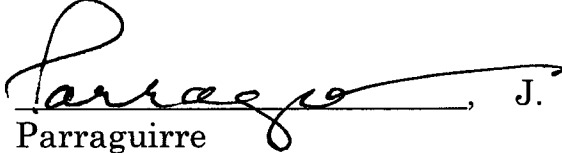
<sup>5</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

he signed the plea agreement voluntarily after consultation with counsel and that accepting the agreement was in his best interest. During the plea canvass, Cardenas admitted that he inappropriately fondled the 12-year-old victim's breast and buttocks. Consequently, we conclude that the district court did not abuse its discretion in denying Cardenas' motion to withdraw his guilty plea. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. John S. McGroarty, District Judge  
Gregory L. Denué  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk