

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY ATKINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53009

FILED

MAY 13 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of assault with a deadly weapon. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Larry Atkinson to serve a prison term of 12 to 30 months.

Atkinson's sole contention on appeal is that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Specifically, Atkinson claims he did not enter his guilty plea voluntarily, knowingly and intelligently because he did not have his reading glasses on the day he signed the guilty plea agreement and was incorrectly informed by his counsel regarding the offense to which he was pleading guilty.

A defendant may file a motion to withdraw a guilty plea before sentencing. NRS 176.165. The district court may grant such a motion in its discretion for any substantial reason that is fair and just. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). 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.” Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001). 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. Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from a judgment of conviction as an intermediate order in the proceedings. NRS 177.045; Harte v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000). If the motion to withdraw is based on a claim that the guilty plea was not entered voluntarily, knowingly, and intelligently, the appellant has the burden to substantiate the claim. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), limited on other grounds by Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994). 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.” Id.


The district court appointed new counsel to represent Atkinson on the motion to withdraw his guilty plea and conducted a hearing on the matter. The district court found there was no legal basis to withdraw the plea.

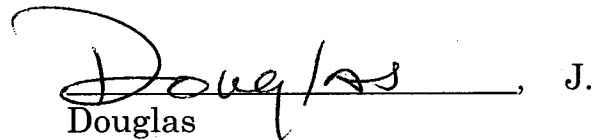
The record reveals that before Atkinson signed the guilty plea agreement, Atkinson’s counsel “read the document in its entirety” to Atkinson. At the plea canvass, counsel informed the district court that Atkinson was pleading guilty to count 1, and Atkinson acknowledged that he was pleading guilty to a category B felony. After the State represented

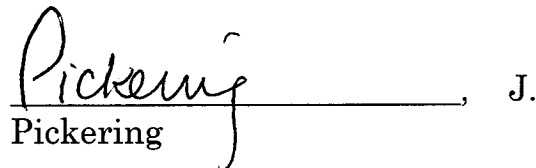
that, if it proceeded to trial, it was prepared to prove beyond a reasonable doubt all the elements of assault with a deadly weapon, Atkinson told the district court that (1) he understood the nature of that charge, (2) he had committed that crime, and (3) he was satisfied with his counsel's representation. Based on the foregoing, we conclude that the district court did not abuse its discretion in denying Atkinson's presentence motion to withdraw his guilty plea.

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

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Robert H. Perry, District Judge
Story Law Group
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk