

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD GONZALO URQUIZU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57360

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingersoll
DEPUTY CLERK

ORDER AFFIRMING AND REMANDING

This is an appeal from a judgment of conviction, pursuant to an Alford plea, of child abuse and neglect and coercion. See North Carolina v. Alford, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

First, appellant Clifford Urquizu contends that the district court erred by denying his motion to strike surplusage from the information or, alternatively, for specific performance of the plea agreement. Regarding the motion to strike, Urquizu asserts that the amended information's reference to "sexual intercourse" is confusing, inconsistent, misleading, and potentially prejudicial because he entered pleas to ostensibly nonsexual offenses. The district court declined to strike the contested language as surplusage, holding that it was part of the factual basis for the Alford plea. We conclude that this determination was not an abuse of discretion. See NRS 173.075(1) (the information must contain a "statement of the essential facts constituting the offense charged"); NRS 173.085.

Regarding the motion for specific performance, Urquizu asserts that he did not get the benefit of his plea agreement because he agreed to plead to nonsexual offenses that would not subject him to lifetime supervision or sex offender registration. We disagree. Neither of the offenses Urquizu was convicted of subject him to lifetime supervision. See NRS 176.0931(1) and (5)(c). And because the judgment of conviction does not indicate that the child abuse involved sexual abuse, neither that conviction nor the nonsexual coercion conviction subject him to sex offender registration. See NRS 179D.095 (defining a sex offender as a person convicted of a sexual offense); NRS 179D.097 (defining sexual offenses); NRS 179D.441 (each sex offender is subject to registration requirements). To the extent the child abuse conviction could be construed as a sexual offense requiring registration due to the challenged language in the amended information, see NRS 179D.097(1)(g) (defining child abuse involving sexual abuse as a sexual offense), the record is clear that Urquizu entered his plea to nonsexual offenses and the parties and the district court agreed that he would not be subject to registration. Thus, we conclude that Urquizu received the benefit of his bargain and the district court did not err by denying this motion. However, under the circumstances of this case, and to avoid confusion by other agencies that may rely on the judgment of conviction, we remand this matter to the district court with instructions to amend the judgment of conviction to state that Urquizu was convicted of “Count 1—Child Abuse and Neglect Not Constituting Sexual Abuse (Category B Felony).”

Second, Urquizu contends that the district court erred by denying his motion to strike surplusage or, alternatively, for specific


performance of the plea agreement without an evidentiary hearing. This claim lacks merit because no evidentiary hearing is required where the issue before the court is purely legal and does not involve factual disputes. Whitman v. Warden, 90 Nev. 434, 436, 529 P.2d 792, 792 (1974).


Third, Urquizu contends that the district court erred by denying, without an evidentiary hearing, his oral presentence motion to withdraw his Alford plea.¹ Urquizu appears to contend that his plea was not knowingly entered because the language in the amended information was not read to him in open court and he therefore did not know that it contained references to sexual intercourse. We presume that the district court correctly assessed the validity of a plea on a motion to withdraw and will not reverse its decision absent an abuse of discretion. Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004). During the plea canvass, the State stated the facts it would have been prepared to prove at trial, including the fact that Urquizu had sexual intercourse with the victims, and Urquizu acknowledged that he read and understood the amended information. And Urquizu signed the written guilty plea agreement, stating that he was entering a plea to the counts as alleged in the attached amended information. We conclude from the totality of the circumstances that Urquizu has failed to overcome the presumption that the district

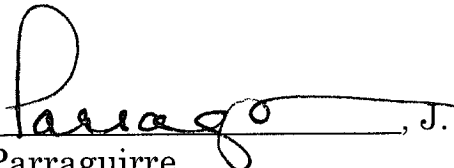
¹It appears that appellant's counsel withdrew appellant's oral motion to withdraw, electing to proceed upon the motion to strike surplusage or, alternatively, for specific performance of the plea agreement instead. It further appears, however, that the district court addressed and denied appellant's oral motion on its merits.

court correctly assessed the validity of his guilty plea. See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001). Further, an evidentiary hearing was not warranted because Urquizu's claim was belied by the record. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND for entry of an amended judgment of conviction consistent with this order.²


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

²Although we filed the fast track statement submitted by Urquizu, it fails to comply with the Nevada Rules of Appellate Procedure. The procedural history and statement of facts sections refer to matters in the record without specific citation to the appendix. See NRAP 3C(e)(1)(C); NRAP 28(e)(1). Counsel for Urquizu is cautioned that the failure to comply with the briefing requirements in the future may result in the fast track statement being returned, unfiled, to be correctly prepared, see NRAP 32(e), and in the imposition of sanctions, see NRAP 3C(n).

cc: Chief Judge, Eighth Judicial District Court
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk