IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER STEVEN KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65462

FILED

MAR 1 7 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of first-degree murder with the use of a deadly weapon. Third Judicial District Court, Lyon County; William Rogers, Judge.

Appellant claims that the district court erred by denying his presentence motion to withdraw his guilty plea. Appellant argues that his plea is invalid because the district court and trial counsel failed to advise him that if he went to trial he could possibly be convicted of a lesser-included offense or that felony murder could be negated by arguing lack of intent for the underlying felony.[1]

A defendant may move to withdraw a plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a

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[1]Appellant also argues that he was not properly informed during the plea canvass regarding the felony-murder rule. This argument was not presented to the district court in the first instance, and we decline to consider it. *See generally Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

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motion "for any substantial, fair, and just reason." *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001).

> A defendant who pleads guilty upon the advice of counsel may attack the validity of the guilty plea by showing that he received ineffective assistance of counsel under the Sixth Amendment to the United States Constitution. The applicable test to determine whether counsel was ineffective is set forth in *Strickland v. Washington*, [466 U.S. 668 (1984)].
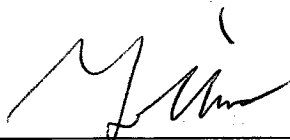
Nollette v. State, 118 Nev. 341, 348-49, 46 P.3d 87, 92 (2002) (internal footnote omitted). "On appeal from a district court's denial of a motion to withdraw a guilty plea, [we] will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion." *Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (internal quotation marks omitted).

The district court conducted an evidentiary hearing and found that appellant entered into his plea voluntarily, knowingly, and intelligently. The district court found that appellant was incorrect that he could have been found guilty at trial of lesser-included offenses because appellant was charged with first-degree felony murder. *See Graham v. State*, 116 Nev. 23, 28-29, 992 P.2d 255, 258 (2000) (concluding that when a person is charged with an enumerated first-degree murder pursuant to NRS 200.030(1), the charge cannot be reduced by failure to prove deliberation, premeditation, or intent). Therefore, counsel was not ineffective for failing to inform him of lesser-included offenses because there were no lesser-included offenses possible. Further, the district court concluded that appellant failed to support his claim regarding a defense to

the underlying burglary with any evidence and it amounted to a purely speculative claim.

The record on appeal supports the district court's factual findings and we conclude that appellant has not demonstrated that counsel was ineffective; established a substantial, fair, and just reason for withdrawing his plea; or shown that the district court abused its discretion by denying his motion to withdraw his guilty plea. *See Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004) (defendant bears the burden of showing that the plea is invalid). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Third Judicial District Court, Dept. 1
    Kenneth V. Ward
    Attorney General/Carson City
    Lyon County District Attorney
    Third District Court Clerk