

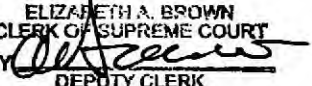
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENATO LEE TREJO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79465-COA

**FILED**

MAR 19 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Renato Lee Trejo appeals from a judgment of conviction entered pursuant to a guilty plea of two counts of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Trejo first argues the district court abused its discretion by denying Trejo's presentence motion to withdraw his guilty plea. In his motion, Trejo argued his guilty plea was invalid because it was coerced when the district court denied Trejo's motion to continue trial and then used that denial to interject itself into the plea process.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just." *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, "the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be

fair and just.” *Id.* at 603, 354 P.3d at 1281. The district court’s ruling on a presentence motion to withdraw a guilty plea “is discretionary and will not be reversed unless there has been a clear abuse of discretion.” *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

First, Trejo claims he was coerced into pleading guilty by the district court’s decision to deny Trejo’s motion to continue trial. While the district court’s decision left Trejo with two options that he did not prefer—whether to accept a plea deal or proceed to trial that day—there is no indication in the record that Trejo was deprived of his ability to make a voluntary and intelligent choice among his remaining options. *See Stevenson*, 131 Nev. at 604, 354 P.3d at 1281 (holding that undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act and not merely by court rulings even if they are later determined to be incorrect). Therefore, we conclude Trejo fails to demonstrate his guilty plea was the result of coercion.

Second, Trejo claims the district court improperly participated in plea negotiations in violation of *Cripps v. State*, 122 Nev. 764, 137 P.3d 1187 (2006). In *Cripps*, the Nevada Supreme Court adopted a bright-line rule prohibiting the district court from participating in plea negotiations between the State and the defense in a criminal prosecution because such participation carries an inherent risk of improper judicial coercion of a guilty plea. *Id.* at 770, 137 P.3d at 1191. Trejo argues the district court improperly participated in plea negotiations by commenting on the simplicity of the State’s case and discussing the penal consequences of

proceeding to trial. Trejo did not raise these arguments in his motion before the district court and does not argue on appeal that they constitute plain error. Accordingly, we decline to consider these claims on appeal in the first instance. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).

Third, Trejo claims for the first time on appeal that he was entitled to withdraw his guilty plea because there was a breakdown in the attorney-client relationship and the district court failed to conduct a *Young*<sup>1</sup> hearing. Trejo did not raise these issues in his motion before the district court and does not argue on appeal that they constitute plain error. Accordingly, we decline to consider these claims on appeal in the first instance. *See id.*

Trejo next claims the district court erred by not conducting an evidentiary hearing on Trejo's motion to withdraw his guilty plea. Trejo fails to demonstrate the district court abused its discretion by failing to undertake an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that to warrant an evidentiary hearing, a defendant must raise claims that are not belied by the record and, if true, would entitle him to relief). For the foregoing reasons, we conclude the district court did not abuse its discretion by denying Trejo's presentence motion to withdraw his guilty plea.

Finally, Trejo claims the State violated the terms of the plea agreement at sentencing by changing positions on the amount of presentence credit Trejo was entitled to receive and, therefore, he should be

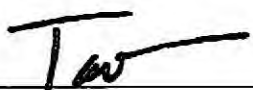
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<sup>1</sup>*Young v. State*, 120 Nev. 963, 102 P.3d 572 (2004).

allowed to withdraw his plea. Presentence credit was not part of the plea agreement, and nothing in the record before this court supports a finding that the number of days' credit Trejo would receive had any impact on his decision to plead guilty. Accordingly, we conclude Trejo has not demonstrated the State breached the plea agreement, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 21  
Legal Resource Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk