

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON MEDINA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 83532

Direct Appeal From A Judgment of Conviction (Guilty Plea)
Eighth Judicial District Court
The Honorable Mary Kay Holthus, District Judge
District Court No. C-20-3349446-1

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

1. Attorney of Record for Appellant:

a. Michael W. Sanft, Esq.

2. Publicly-held Companies Associated:

a. N/A

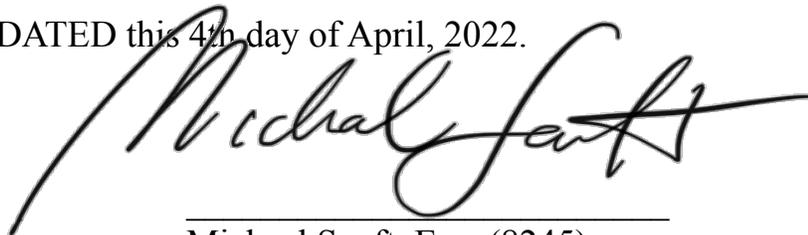
3. Law Firm(s) Appearing in the Court(s) Below:

a. Clark County District Attorney

b. Clark County Public Defender

c. Sanft Law

DATED this 4th day of April, 2022.



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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction after an entry of plea, finding Appellant Aaron Medina guilty of 2 felony counts. (3 Appellant's Appendix "AA" 0711-AA0714). The Judgment of Conviction was filed on August 23, 2021. (3 AA0711). The Notice of Appeal was filed on September 16, 2021. (3 AA0715). This Court has jurisdiction over this appeal under NRS 177.015, which provides for the right to appeal a final judgment in a criminal case.

ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals because it is concerning a judgment of conviction based on a guilty plea. NRAP 17(b)(1).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The lower court abused its discretion when it denied Mr. Medina's motion to withdraw his guilty plea agreement that resulted from a settlement conference.

STATEMENT OF THE FACTS

A grand jury convened and eventually returned a true bill on July 15, 2020 alleging three counts of Lewdness with a Child under the Age of Fourteen, and two counts of Sexual Assault with a Minor Under Fourteen Years of Age against Mr. Medina. AA002-AA004.

Violet Radosta, Esq. from the Special Public Defender's Office was appointed to represent Mr. Medina. AA001. On October 6, 2020, Mr. Medina participated in a settlement conference with Ms. Radosta and Ms. Sandy

DiGiacomo from the Clark County District Attorney's office. AA009. Mr. Medina and the State agreed to terms and after a complete canvas by the District Court, Mr. Medina pled guilty pursuant to a guilty plea agreement under the Alford decision. AA008-AA018. An amended Indictment reflecting the new counts were filed on October 6, 2020. AA006-AA007.

STATEMENT OF THE CASE

On July 17, 2020 a grand jury indictment charged Mr. Medina with three counts of lewdness with a child under the age of fourteen and two counts of sexual assault with a minor under fourteen years of age. AA002-AA005. The State filed an amended indictment on October 6, 2020 reducing the counts to one count of Attempt Sexual Assault with a Minor Under Fourteen Years of Age, and one count of Attempt Lewdness with a Child Under the Age of 14. AA006-AA007.

On October 6, 2020, Mr. Medina and the State of Nevada participated in a settlement conference. Mr. Medina agreed to plead guilty to one count of attempt sexual assault with a minor under fourteen years of age and one count of attempt lewdness with a child under the age of fourteen. AA008-AA016. A guilty plea agreement was filed with the Court and Mr. Medina appeared in front of District Court Judge Joe Hardy on the same day. *Id.* The Court canvassed Mr. Medina regarding his agreement, the counts to which he was pleading guilty, and his knowledge and understanding of the negotiations. AA017-AA027. A sentencing date was set for November 19, 2020. AA0026.

At his sentencing hearing, Mr. Medina indicated that he wished to withdraw his plea and have his attorney removed and have new counsel appointed. AA029. The court ordered that Mr. Medina receive new counsel appointed to review Mr. Medina's request to withdraw his plea. AA031.

On April 27, 2021 a Motion to Withdraw Plea was filed. AA033-AA039. Mr. Medina alleged that a full set of discovery was never provided to him prior to negotiations, that his defenses were never fully investigated, his parents were frightened in an effort to make sure Mr. Medina pled guilty, and he was rushed into an agreement at the settlement conference. AA035. COVID-19 and distance requirements for those in custody exacerbated the situation. AA039.

A hearing on the Motion to Withdraw Plea was scheduled for May 27, 2021, however the State of Nevada requested more time to file an opposition and a new hearing date was set for July 8, 2021. AA040-AA045. On July 8, 2021, the Motion to Withdraw Plea was heard and denied. AA046-AA047. On August 17, 2021, Mr. Medina was adjudged guilty of one count of attempt sexual assault with a minor under fourteen years of age and one count of attempt lewdness with a child under the age of fourteen and sentenced to a minimum of eight years and a maximum of twenty years for count one; and a minimum of two years and a maximum of five years on count two; for an aggregate total of a minimum ten years and a maximum of twenty-five years. A special sentence of lifetime supervision was also imposed to commence upon release. AA049-AA057.

This appeal follows.

SUMMARY OF THE ARGUMENT

In Nevada, a district court may grant a defendant's pre-conviction motion to withdraw a guilty plea for any "substantial reason" if it is "fair and just." *Woods v. State*, 114 Nev. 468, 475, 958 P. 2d 91, 95 (1998) (citing *State v. District Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)). Mr. Medina argued that upon considering of all the aspects of his plea, especially in the light of COVID-19, that his motion to withdraw his plea should have been granted.

ARGUMENT ON THE ISSUES

I. The District Court Abused Its Discretion When It Denied Petitioner's Motion to Withdraw Guilty Plea, Despite The Lack of Supporting Record

In Nevada, a district court may grant a defendant's pre-conviction motion to withdraw a guilty plea for any "substantial reason" if it is "fair and just." *Woods v. State*, 114 Nev. 468, 475, 958 P. 2d 91, 95 (1998) (citing *State v. District Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)). To determine whether the defendant advances a substantial, fair, and just reason to withdraw a guilty plea, the district court must consider the totality of the circumstances surrounding the defendant's plea. *Woods*, 114 Nev. at 475, 958 P. 2d at 95-96 (1998).

A criminal defendant may also withdraw his guilty plea if, under the totality of the circumstances, the court finds that he did not enter that plea voluntarily, knowingly, and intelligently. *Woods*, 114 Nev. at 475, 958 P.2d at 95-96 (1998);

Crawford v. State, 117 Nev. 718, 722, 30 P. 3d 1123, 1125-26 (2001); *Baal v. State*, 106 Nev. 69, 787 P.2d 391 (1990). The guidelines for voluntariness of guilt require that the record affirmatively show that the defendant entered his plea understandingly and voluntarily. See *Heffley v. Warden*, 89 Nev. 573, 574, 516 P.2d 1403, 1404 (1973). A “knowing” plea is one entered with a full understanding of the nature of the charge and all the consequences of the plea. *Boykin v. Alabama*, 395 US 238 (1969). Furthermore, advice regarding such a guilty plea can be further broken down into whether such advice concerns direct or collateral consequences of the plea. *Nollette v. State*, 118 Nev. 341, 348-49, 46 P.3d 87, 92 (2002). Pursuant to *Nollette*,

Direct consequences are those that have a “definite, immediate, and largely automatic effect on the range of the defendant’s punishment. Collateral consequences, by contrast, do not affect the length or nature of the punishment and are generally dependent on either the court’s discretion, the defendant’s future conduct, or the discretion of a government agency.” 118 Nev. at 344.

Moreover, a plea agreement is always construed according to what the defendant reasonably understood when he entered the plea. *Statz v. State*, 113 Nev. 987, 993, 944 P.2d 813, 817 (1997); *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999). The defendant’s reasonable understanding is distinguishable from the mere subjective belief of a defendant as to any potential sentence, or hope of leniency, unsupported by a promise from the State or an indication by the court. See *Rouse v. State*, 91 Nev. 677, 541 P. 2d 643 (1975).

Notwithstanding the above, a defendant who enters a guilty plea based on the advice of counsel may withdraw said plea by demonstrating that counsel performed ineffectively under the Sixth Amendment to the United States Constitution. *Nollette v. State*, 118 Nev. 341, 348-349, 46 P.3d 87, 92 (2002); *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). For instance, the Court has held that a Defendant suffering immigration consequences may challenge even a collateral consequence suffered, so long as “affirmative misadvice [by trial counsel] regarding immigration consequences may constitute ineffective assistance of counsel and support withdrawal of a guilty plea as involuntarily entered.” *Ayala-Guerrero v. State*, 124 Nev. 1450, 238 P.3d 793 (2008).

Here, the lower court abused its discretion when it denied Mr. Medina’s motion to withdraw his plea. In light of the pandemic, and Mr. Medina’s inability to communicate in a way he believed was sufficient, Mr. Medina entered into a negotiation that he eventually believed was not in his best interest. This issue was not sufficiently considered by the lower court at the time his motion was denied.

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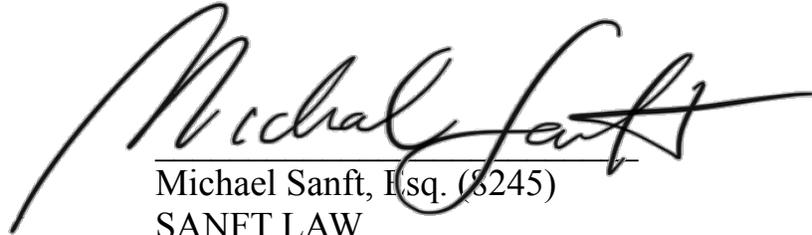
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CONCLUSION

For these reasons, Mr. Medina respectfully requests that his Motion to Withdraw Plea be granted.

DATED this 4th day of April, 2022.



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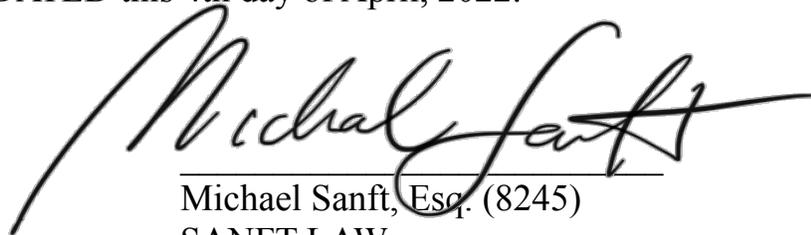
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief does comply with the formatting requirements of NRAP 32(a)(4).
2. I certify that this brief does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.
3. I certify that this brief does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 2,060 words.

4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4th day of April, 2022.

A handwritten signature in black ink, appearing to read "Michael Sanft", written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 4th day of April, 2022, a copy of the foregoing Appellant’s Opening Brief was served by electronic filing as follows:

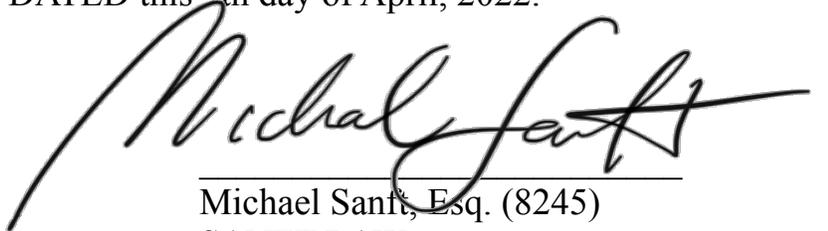
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