

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIUSSEPPE W. RUSSO, A/K/A
GIUSEPPE W. RUSSO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71998

FILED

DEC 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Giusseppe W. Russo appeals from an amended judgment of conviction. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

The district court convicted Russo of possession of a firearm by a felon pursuant to a guilty plea and sentenced him to a prison term of 16 to 40 months. Russo filed a direct appeal challenging the district court's denial of his presentence motion to withdraw his guilty plea. We determined the district court did not use the correct standard for deciding Russo's motion, and we vacated the judgment of conviction and remanded the matter for reconsideration of the motion under the correct standard. *Russo v. State*, Docket No. 68446 (Order Vacating Judgment and Remanding, March 16, 2016). On remand, the district court entered an order denying Russo's motion to withdraw his guilty plea and an amended judgment of conviction. This appeal follows.


Russo claims the district court abused its discretion by denying his motion to withdraw his guilty plea because he established a fair and just reason for withdrawing his guilty plea. In his motion, Russo argued he did not enter his guilty plea knowingly, voluntarily, or intelligently because he was under duress, defense counsel's performance was deficient, and the district court participated in discussions regarding the plea negotiations.

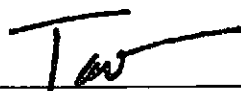
The district court reviewed the pleadings, exhibits, and JAVS recording of the plea canvass. The district court found it had received three

letters from Russo after he entered his guilty plea: the first letter did not mention any desire to withdraw the plea, the second letter expressly stated he did not want to take his plea back, and the third letter asked for probation. The district court further found there was no evidence to substantiate Russo's claims, Russo and his defense counsel were granted two lengthy recesses to discuss the State's offers, the district court did not involve itself in the plea negotiations, and the district court repeatedly told Russo it was not forcing him to plead guilty. The district court concluded from the totality of the circumstances there was no fair and just reason to grant Russo's motion.

The record demonstrates the district court applied the correct standard for resolving Russo's presentence motion to withdraw his guilty plea, *see Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015), and we conclude the district court did not abuse its discretion by denying Russo's motion, *see State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969) (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 that discretion."). Accordingly, we

ORDER the amended judgment of conviction AFFIRMED.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Hon. Carolyn Ellsworth, District Judge
Nguyen & Lay
Clark County District Attorney
Attorney General/Carson City
Eighth District Court Clerk