

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERBERT DON BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75778

FILED

JUN 26 2019

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted burglary and attempted robbery. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Herbert Brooks contends the district court abused its discretion when it denied his presentencing motion to withdraw his guilty plea. 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). When making this determination, "the district court must consider the totality of the circumstances." *Id.* at 603, 354 P.3d at 1281. "This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion." *Johnson v. State*, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007).

Before pleading guilty, Brooks reviewed the plea agreement with counsel and the district court thoroughly canvassed him. He confirmed in writing and at his plea canvass that he understood his plea agreement, the nature of his charges, and the possible penalties. He expressly confirmed that no one forced or coerced him into pleading guilty and that he understood sentencing was strictly up to the court.

Nonetheless, Brooks argued in his motion that counsel coerced him into pleading guilty by assuring him that he would get probation without first investigating his criminal history. The only evidence in support of these allegations was Brooks's testimony at the evidentiary hearing, which counsel directly refuted. The district court accepted counsel's testimony as true, which it was entitled to do. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) ("The district court was the sole judge of the credibility of the two opposing views aired at the hearing on [defendant's] motion, and the district court was entitled to accept [defense counsel's] representations as true."). The district court then denied Brooks's motion.

The record before this court supports the district court's conclusion. Additionally, the district court appropriately considered the totality of the circumstances in making its determination, as required by *Stevenson*, 131 Nev. at 603, 354 P.3d at 1281. We therefore conclude that Brooks has not demonstrated that the district court abused its discretion by denying his motion to withdraw his guilty plea.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering
Parraguirre, J.
Parraguirre
Cadish, J.
Cadish

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