

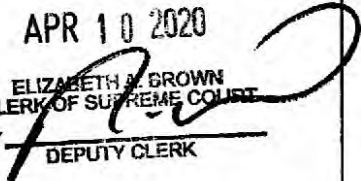
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH RYAN POBLETE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77783-COA

FILED

APR 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Ryan Poblete appeals from a judgment of conviction entered pursuant to a guilty plea of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Poblete argues the district court erred by denying his presentence motion to withdraw his guilty plea without conducting an evidentiary hearing. In his motion, Poblete claimed his plea was not entered knowingly and voluntarily because he had a history of substance abuse and he was under the influence of drugs when he entered his plea. Poblete also asserted his counsel coerced him into entering a guilty plea by failing to provide mitigation evidence to the State.

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. To warrant an evidentiary hearing, Poblete must have raised claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

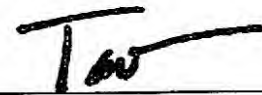
The district court reviewed the record and found the record belied Poblete's claims. At the plea canvass, Poblete asserted he had read the written plea agreement, discussed it with his counsel, and understood the agreement. In the written plea agreement, Poblete asserted he understood the charge and the potential sentence he faced. In the written plea agreement, Poblete also acknowledged that he was not acting under the influence of a controlled substance or other drug which would impair his ability to comprehend or understand the agreement. In addition, Poblete acknowledged in the written plea agreement and at the plea canvass that he did not enter his guilty plea under duress or coercion.

Based on the record, the district court found Poblete entered his guilty plea knowingly, voluntarily, and intelligently. The district court found, based on the totality of the circumstances, Poblete did not demonstrate a fair and just reason to permit withdrawal of his guilty plea. After review of the record, we conclude Poblete has not demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea without conducting an evidentiary hearing. *See Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994) (reviewing the district

court's denial of a motion to withdraw guilty plea for an abuse of discretion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk