

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON LEE COOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79764-COA

FILED

MAY 11 2020

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

ORDER OF AFFIRMANCE

Jason Lee Cooper appeals from a judgment of conviction, pursuant to a guilty plea, of possession of stolen property. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Cooper contends the district court abused its discretion by denying his presentence 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). We give deference to the findings of the district court so long as they are supported by the record. *Id.*

Cooper argues his guilty plea was improperly induced by the State’s strong opposition to reduced bail or release on Cooper’s own recognizance while his case was pending in the justice court. The State disputes these factual contentions. Because the district court made no specific findings as to this argument and Cooper failed to provide this court with a copy of his motion to withdraw his guilty plea, it is unclear whether Cooper raised the argument in his motion below. However, even assuming

this claim was raised below and is properly presented on appeal,¹ we conclude Cooper failed to demonstrate the district court abused its discretion by denying his motion on this ground because he provided no evidence in support of his argument in his appendix. See NRAP 30(b)(3) (requiring appellant to provide the portions of the record that are essential to a determination of the issues raised on appeal); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”).

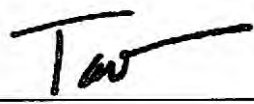
Cooper next argues the district court applied the wrong standard in denying his claim that his guilty plea was not knowingly, intelligently, and voluntarily entered. He asserts that in reviewing the totality of the circumstances, including his testimony at the evidentiary hearing, it is evident that he did not knowingly enter his plea because he did not understand that by pleading guilty he gave up his opportunity to change his plea at a later time and believed he could change his plea back to not guilty at any time. After conducting an evidentiary hearing on Cooper’s motion, the district court stated that it considered the totality of the circumstances and found Cooper failed to demonstrate a fair and just reason to withdraw his guilty plea. This is the proper standard. Moreover, we cannot conclude the district court abused its discretion by denying the motion because Cooper’s subjective belief that he would be able to withdraw his plea at any time did not constitute a fair and just reason to withdraw his plea. *Cf. Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (“[M]ere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the

¹The State does not argue this claim was not presented below.

court, is insufficient to invalidate a guilty plea as involuntary or unknowing.”). For these reasons, we conclude Cooper failed to demonstrate the district court abused its discretion by denying his motion on these grounds.

Having concluded Cooper is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Leon Aberasturi, District Judge
Walther Law Offices, PLLC
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk