

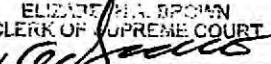
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK THOMAS GEORGANTAS, A/K/A
MARK GEORGANTIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79161-COA

FILED

APR 12 2021

ELIZABETH H. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mark Thomas Georgantas appeals from a judgment of conviction, entered pursuant to a guilty plea, of theft in the amount of \$3,500 or more. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

First, Georgantas argues the district court erred by denying his presentence motion to withdraw his guilty plea without conducting an evidentiary hearing. 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). “[T]he 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. We review the district court’s decision

on a motion to withdraw a guilty plea for an abuse of discretion. *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

Georgantas argued he should be allowed to withdraw his plea because he relied on counsel's statement that he could withdraw his plea if he was unable to receive medical treatment for his hip. The district court determined Georgantas failed to demonstrate a fair and just reason to withdraw his plea.

The district court first found that Georgantas failed to demonstrate counsel was ineffective when he allegedly gave the advice to Georgantas. To demonstrate ineffective assistance of defense counsel related to a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Georgantas claimed he was not sure what he would have done had counsel not told him he could withdraw his plea but that he would not have accepted these negotiations. This statement was an insufficient allegation of prejudice to warrant an evidentiary hearing. Further, the

district court specifically canvassed Georgantas about whether he was pleading guilty because he wanted to seek treatment outside of prison for his hip or if he was pleading guilty because he was, in fact, guilty of the crime. Georgantas stated he was pleading guilty because he was guilty of the crime and not because of his hip. In light of these statements, Georgantas failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had counsel not told him he could withdraw his plea.

The district court next found Georgantas did not demonstrate a fair and just reason to withdraw his plea because Georgantas had fourteen months from the time he pleaded guilty to the time he was arrested on the bench warrant to complete the treatment for his hip. Therefore, he had ample time to complete the treatment, and his failure to do so did not present a fair and just reason to withdraw his plea. Based on this record, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Georgantas also appears to argue the district court erred by denying his claim that he was actually innocent of the crime and, therefore, should have been allowed to withdraw his plea. In his motion to withdraw, Georgantas failed to support his claim with specific factual allegations that were not belied by the record and, if true, would entitle him to relief. Accordingly, we conclude the district court did not err by denying Georgantas's presentence motion to withdraw his guilty plea without first conducting an evidentiary hearing.

Georgantas next argues the district court abused its discretion at sentencing by imposing a sentence for the small habitual criminal enhancement based on impalpable or highly suspect evidence. Specifically, he claims the district court believed he did not receive any treatment for his hip while awaiting sentencing, and the district court should have given him an opportunity to present evidence that he did receive some treatment.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


The sentence imposed of 8 to 20 years is within the parameters provided by the relevant statute. *See* NRS 207.010(1)(a) (2009). And Georgantas does not demonstrate that the district court relied on impalpable or highly suspect evidence. At the sentencing hearing, Georgantas stated he did not get a hip replacement but did receive one shot of a series of five stem cell shots in the fourteen months between pleading guilty and sentencing. Because Georgantas did not complete any treatment during that time, it was not unreasonable for the district court to determine Georgantas did not receive any treatment, and documentation of the one shot would not have changed this perception.

Further, the district court sentenced Georgantas pursuant to the small habitual criminal statute because Georgantas failed to appear for

a sentencing hearing and absconded from the jurisdiction, delayed sentencing numerous times by attempting to change attorneys, and did not complete treatment for his hip. Thus, it was a combination of factors that led the district court to sentence Georgantas pursuant to the small habitual criminal statute, not just the fact that Georgantas failed to complete the treatment for his hip. Therefore, having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Georgantas. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 23
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Attorney General/Las Vegas
Attorney General/Ely
Eighth District Court Clerk