IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BO DWIGHT HEGGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83664-COA

ORDER OF AFFIRMANCE

Bo Dwight Hegge appeals from a judgment of conviction, entered pursuant to a no contest plea, of possession of a firearm by a prohibited person. Fourth Judicial District Court, Elko County; Kriston N. Hill, Judge.

Hegge argues the district court erred by denying his presentence motion to withdraw his no contest plea without first conducting an evidentiary hearing. A defendant may move to withdraw a no contest 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); *see State v. Smith*, 131 Nev. 628, 630, 356 P.3d 1092, 1094 (2015) (noting that courts treat no-contest pleas as guilty pleas). 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." *Stevenson*, 131 Nev. 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. *See Molina v. State*, 120 Nev. 185,

191, 87 P.3d 533, 538 (2004). To warrant an evidentiary hearing, a defendant 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).

First, Hegge argued that he should be allowed to withdraw his plea because he believed he could legally possess a firearm until the time of his arrest and thus did not willfully violate the law. Hegge further argued that although he may have discussed this defense with trial-level counsel, if he did, he did not understand its significance. The record indicates Hegge discussed this defense with counsel prior to and during the plea canvass and that Hegge understood he was waiving his right to present this defense by entering his plea. Moreover, Hegge's bare claim failed to specify what he did not understand about this defense.[1]

Second, Hegge argued that he should be allowed to withdraw his plea because the police officer's pat-down search was illegal. Although Hegge conceded that he had discussed the validity of the search with counsel, Hegge argued that he did not understand "that there were issues about whether [the police officer's] suspicions that [he] was armed were objectively reasonable." Hegge's bare claim failed to specify what he did not understand about this defense or what issues he did not discuss with counsel. Further, the record indicates that the police officer had reasonable suspicion to conduct the pat-down search: The victim reported that Hegge

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[1]We note that "willfully" violating the law is not an element of possession of a firearm by a prohibited person. *See* NRS 202.360(1); *Hager v. State*, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019); *see also Whiterock v. State*, 112 Nev. 775, 782, 918 P.2d 1309, 1314 (1996) ("It is well established that mistake or ignorance of the law is not a defense to a criminal action.").

had put a gun to his head and forced him out of his residence, and police officers subsequently found Hegge outside the victim's residence. *See Somee v. State*, 124 Nev. 434, 442, 187 P.3d 152, 158 (2008) (stating police officers may "conduct a limited pat-down search for weapons of a suspect who they reasonably believe is armed with a dangerous weapon and is a threat to the safety of the peace officer or another" (internal quotation marks omitted)).

Third, Hegge argued that he should be allowed to withdraw his plea because he purchased the firearm to give to his girlfriend to protect herself and their two children from anonymous threats he had been receiving. However, at the time Hegge was found in possession of the firearm, he was outside the victim's residence with the firearm, he stated that he had gone to the victim's residence to collect a stolen coin, his girlfriend and children were not present, and Hegge did not allege that the victim was the source of the anonymous threats. Moreover, Nevada's appellate courts have not recognized defense of others as a viable defense to a charge of possession of a firearm by a prohibited person.

Fourth, Hegge alleged that the State withheld a letter from the victim, written approximately one month after Hegge's arrest, that indicated the victim was now incarcerated in Utah. Hegge did not explain the significance of this letter in his pleadings below. On appeal, Hegge argues he should be allowed to withdraw his plea because the letter constitutes exculpatory *Brady*[2] material. This argument was not raised below, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

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[2]*Brady v. Maryland*, 373 U.S. 83 (1963).

Finally, we note that Hegge filed his motion to withdraw his plea approximately eleven weeks after entry of the plea. "[O]ne of the goals of the fair and just analysis is to allow a hastily entered plea made with unsure heart and confused mind to be undone." *Stevenson*, 131 Nev. at 605, 354 P.3d at 1281-82 (internal quotation marks omitted). However, it is "not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty." *Id.* at 605, 354 P.3d at 1282 (quotation marks omitted).

In light of the totality of the circumstances in this matter, Hegge failed to demonstrate a fair and just reason to permit withdrawal of his plea. Therefore, we conclude Hegge has not demonstrated the district court abused its discretion by denying his motion to withdraw his plea without conducting an evidentiary hearing.

Hegge next appears to argue that conflict counsel should have been appointed because his counsel's effectiveness was called into question. Hegge did not seek to withdraw his plea due to the ineffective assistance of counsel. Rather, Hegge expressed confusion in his reply to the State's assertion below that Hegge was claiming counsel was ineffective and, thus, that counsel had become a necessary witness. Therefore, we conclude Hegge failed to demonstrate the district court erred by declining to appoint conflict counsel.

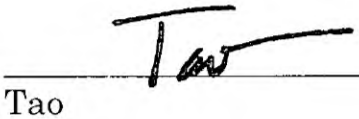
Hegge also argues that the district court abused its discretion by sentencing him to a prison term rather than allowing him the opportunity for community supervision. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987); *see also* NRS 176A.100(1)(c) (stating the district

court has discretion to suspend the execution of a sentence imposed and grant probation). Generally, this court 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); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

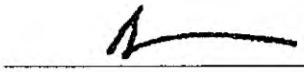
The sentence imposed of 12 to 30 months in prison is within the parameters provided by the relevant statute. *See* NRS 202.360(1). Moreover, Hegge does not allege that the district court relied on impalpable or highly suspect evidence. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in imposing Hegge's sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Kriston N. Hill, District Judge
Ben Gaumond Law Firm, PLLC
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk