

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHON IANRAY WALKER-YORK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85444-COA

FILED

AUG 17 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathon Ianray Walker-York appeals from a judgment of conviction, entered pursuant to an *Alford*<sup>1</sup> plea, of sexual assault and lewdness with a child under 14 years of age. First Judicial District Court, Carson City; James Todd Russell, Judge.

Walker-York argues the district court abused its discretion by denying his presentence motion to withdraw his 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). 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. We give deference to the district court’s factual findings if they are supported by the record. *Id.* at 604, 354 P.3d at 1281. The district court’s ruling on a presentence motion to withdraw a guilty plea “is discretionary

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

and will not be reversed unless there has been a clear abuse of that discretion.” *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

First, Walker-York claimed that he should be allowed to withdraw his plea because he is innocent. A credible claim of factual innocence can be a fair and just reason to grant a motion to withdraw a guilty plea. *See Mitchell v. State*, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993). The district court held an evidentiary hearing on Walker-York’s motion. Walker-York testified that he did not commit the offenses and believed he should not be imprisoned for a crime that he can “prove [he] didn’t do or semi prove [he] didn’t do.” No additional evidence of Walker-York’s innocence was introduced at the evidentiary hearing. Accordingly, we conclude Walker-York failed to demonstrate a credible claim of factual innocence.<sup>2</sup>

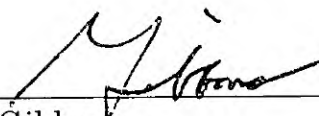
Second, Walker-York claimed that he should be allowed to withdraw his plea since he only agreed to enter it because he lost confidence in counsel. Walker-York testified that he felt abandoned by counsel and that counsel seemed disinterested in going to trial. He also testified that he realized that entering his plea was a mistake following a conversation he had with his wife which occurred after the entry of his plea. Counsel testified that he was preparing for trial when the plea offer was made, he discussed all of Walker-York’s options with him, he had no concerns about the voluntariness of Walker-York’s plea, and he believed he adequately

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<sup>2</sup>Walker-York argues for the first time on appeal that the fact that his pre-plea trial ended in a hung jury is evidence of his actual innocence. This argument was not made below. Therefore, 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).

communicated with Walker-York. In addition, Walker-York's motion was filed over a year after the entry of his plea, and no evidence regarding the timing of Walker-York's decision to withdraw his plea was introduced at the evidentiary hearing. Walker-York thus failed to demonstrate a fair and just reason to withdraw his plea. *See Stevenson*, 131 Nev. at 605, 354 P.3d at 1281-82 (recognizing that the fair and just analysis is not intended "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" (quotation marks omitted)). Therefore, we conclude that the district court did not abuse its discretion by denying Walker-York's presentence motion to withdraw his guilty plea, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. James Todd Russell, District Judge  
John E. Malone  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk