


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN DREW PELLICAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85686-COA

FILED

DEC 26 2023

ELIZABETH A. BRIDGMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dustin Drew Pellican appeals from a judgment of conviction, entered pursuant to a guilty plea, of stop required on signal of police officer. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Pellican argues 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). 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 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).

Pellican contended below that the withdrawal of his plea was fair and just because he did not understand the factual basis for the charge against him. In particular, Pellican contended that the information named Officer Gariano as the victim of stop required on signal of a police officer


but that Officer Gariano could not have been the victim because stop required on signal of a police officer requires an officer to be readily identifiable and the discovery shows Officer Gariano was an undercover officer who drove a plain vehicle. Pellican further contended that he only had 20 to 30 minutes to review discovery prior to entering his plea and that he relied on counsel's representation that Officer Gariano was the victim.

Officer Gariano's declaration of arrest report indicates that on February 17, 2022, he and another officer were undercover when they conducted surveillance on a vehicle driven by Pellican. The undercover officers eventually requested a marked Las Vegas Metropolitan Police Department vehicle to conduct a traffic stop of the vehicle. The report further indicates that the officers in the marked vehicle attempted to stop Pellican by activating their emergency overhead lights and siren, Pellican pulled into a gas station at 4380 E. Bonanza Rd., and Pellican then fled in his vehicle at a high speed when the officers were about to exit their vehicle.


Pellican failed to demonstrate that he did not understand the factual basis for the charge against him. Even if the information erroneously listed Officer Gariano as the officer who attempted the stop, it correctly states that the factual basis for the charge stems from the events that occurred on February 17, 2022, at the gas station at 4380 E. Bonanza Rd. Moreover, at an evidentiary hearing on the motion, counsel testified that Pellican reviewed the full discovery approximately two weeks prior to entering his plea and that after reviewing this discovery, Pellican asked her to negotiate for the charge of stop required on signal of a police officer, which she did. The district court implicitly found counsel's testimony to be credible, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Pellican did not present any evidence at the hearing to support his claim that he did not understand the factual basis for his plea. Moreover, in the plea agreement, Pellican indicated that he understood the nature of the charges against him, that pleading guilty was in his best interest, and that he was satisfied with counsel's services. During the plea canvass, Pellican also stated that he read and understood everything in the plea agreement and that counsel had gone over the police reports and evidence with him. In light of the foregoing, we conclude that Pellican failed to demonstrate a fair and just reason to withdraw his plea and that the district court did not abuse its discretion by denying Pellican's presentence motion to withdraw his guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Law Office of Rachael E. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk