

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEDRIC LOUELLA REESE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86207-COA

FILED

DEC 29 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Cedric Louella Reese appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of two counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Reese argues the district court erred by denying his presentence motion to withdraw his guilty plea. In his motion, Reese argued that his plea was not freely and voluntarily entered based on trial counsel's ineffectiveness. Specifically, he claimed that counsel was ineffective for failing to communicate with him prior to trial, failing to interview and investigate his witnesses, and failing to obtain evidence regarding the investigation and witness interviews conducted by child protective services. He claimed he felt coerced into pleading guilty on the second day of trial based on counsel's lack of preparation for trial.

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

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

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. Courts should not focus exclusively on whether the plea was valid. *Id.*

Ineffective assistance of counsel could be a fair and just reason for withdrawing a guilty plea. *See Sunseri v. State*, 137 Nev. 562, 566, 495 P.3d 127, 132 (2021). 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). 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 the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

The district court’s findings at the conclusion of the hearing on Reese’s motion to withdraw guilty plea focused exclusively on whether Reese’s plea was validly entered and did not consider his claims that counsel was ineffective. Thus, the district court failed to consider the totality of the circumstances when determining whether Reese demonstrated a fair and just reason to withdraw his plea. Further, the district court erred by informing Reese that he had to raise his ineffective-assistance-of-counsel claims in a postconviction petition for a writ of habeas corpus. *See Sunseri*, 137 Nev. at 566, 495 P.3d at 132. Thus, we conclude that the district court abused its discretion by denying his motion without first considering all the claims raised by Reese in his motion. Moreover, Reese’s ineffective assistance of counsel claims were not belied by the record and, if true, could entitle him to relief. Therefore, we conclude the district court abused its

discretion by failing to conduct an evidentiary hearing on Reese's claims before denying the motion.

Accordingly, we vacate the judgment of conviction and remand this matter for the district court to conduct an evidentiary hearing on Reese's presentence motion to withdraw his guilty plea. After making the necessary findings of fact and conclusions of law, the district court shall either grant Reese's motion and allow him to withdraw his guilty plea and litigate his criminal case, or it shall deny his motion and re-enter the judgment of conviction. For the foregoing reasons, we

ORDER the judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Adras & Altig Attorneys at Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk