

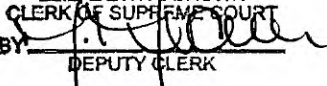
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOANNE CAROL DEBERNARDO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86272-COA

FILED

JAN 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joanne Carol Debernardo appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Debernardo argues that the district court erred by denying her presentence motion to withdraw her 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 [her] 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).² In

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

²We note that an *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

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).

In her motion, Debernardo argued that she should be permitted to withdraw her plea because her plea was not knowingly, voluntarily, or intelligently entered. In particular, Debernardo contended that she was experiencing lethargy and incoherence when she participated in the settlement conference and entered her plea due to certain medications she was taking at the time. Debernardo also contended that she did not fully understand the plea agreement because of these medications, and that she felt rushed because she only had 10 minutes to review the plea agreement.

The district court held an evidentiary hearing on the motion, in which Debernardo and her prior counsel from the settlement conference, S. Spelman and J. Savage, testified. Debernardo testified that, during her case, she was committed to a medical hospital for approximately two months and that the hospital gave her three medications. Debernardo testified that when she returned to the Clark County Detention Center, she continued taking two of those medications—Zyprexa and Trileptal—and that these medications made her feel lethargic and incoherent.

Debernardo testified that she was taking these medications the day she participated in the settlement conference and entered her plea, and that these medications affected her decision to enter her plea. Debernardo

also testified that she stopped taking these medications after the settlement conference and that she asked counsel to withdraw her plea the following day. Finally, Debernardo testified that she did not inform the court during the plea canvass that these medications affected her ability to understand the proceedings because the medications caused her responses to be “mechanical” in nature. Debernardo did not identify any specific provision of the plea agreement that she did not understand.

Neither Spelman nor Savage testified that Debernardo appeared lethargic or incoherent during the settlement conference or the plea hearing. Spelman testified that Debernardo appeared distraught during the settlement conference and that she was uncertain whether she wanted to take the plea deal. Spelman testified that Debernardo was adamant about her innocence and that her major focus during the negotiations was that she not admit any guilt. Spelman further testified that he and Savage discussed the negotiations with Debernardo for “an extensive amount of time,” and that he would not describe Debernardo as “slow” during the negotiations, but that it had been a long time.

Savage testified that nothing gave him pause or concern about Debernardo’s ability to understand what was happening at the settlement conference. Savage further testified that he would have raised the issue if he had any concerns regarding the validity of Debernardo’s plea. Savage testified that he was aware there were competency concerns in this case, that he was part of that process, and that the medical hospital had an “enormously positive effect” on Debernardo. Savage also testified that none of Debernardo’s earlier competency concerns resurfaced during the

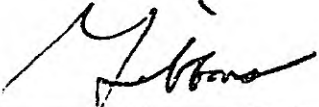
settlement conference or the entry of the plea. Savage testified that he and Spelman felt comfortable that Debernardo understood the proceedings and that nothing indicated Debernardo was involuntarily entering her plea.

The district court took judicial notice of the register of actions in this case, which indicated the settlement conference was approximately two hours long. Moreover, in the plea agreement, Debernardo stated she was not under the influence of any drugs “which would in any manner impair [her] ability to comprehend or understand this agreement or the proceedings surrounding [her] entry of this plea.” At the plea canvass, the district court asked Debernardo if she was under the influence of any medications, and Debernardo stated, “Just the medication that they put me on for mood stabilizer.” Debernardo then stated the medication did not affect her ability to understand the proceedings. The court also went over the terms of the plea agreement—that Debernardo was pleading guilty pursuant to *Alford* to voluntary manslaughter with the use of a deadly weapon, that the parties had stipulated to a prison sentence of 5 to 12.5 years, and that the State had agreed to dismiss two other cases—and Debernardo confirmed that was her understanding of the plea agreement. Debernardo indicated that she had read the plea agreement and twice affirmed that she understood everything contained in the plea agreement. Debernardo also told the court twice that she was not guilty and that she was entering her plea to avoid the possibility of a harsher punishment if she were convicted at trial.

After considering the totality of the circumstances, we conclude that Debernardo failed to demonstrate a fair and just reason to withdraw

her plea and that the district court did not abuse its discretion by denying Debernardo's presentence motion to withdraw her plea. To the extent Debernardo argues on appeal that the district court erroneously focused on the validity of her plea in denying her motion, *see Stevenson*, 131 Nev. at 603, 354 P.3d at 1280-81, we conclude that any potential error does not warrant relief because Debernardo failed to demonstrate a fair and just reason for withdrawing her plea, *see id.*; *see also Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Pitaro & Fumo, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk