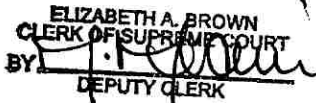


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY SULLIVAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85853-COA

FILED
FEB 23 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Larry Sullivan appeals pursuant to NRAP 4(c) from a judgment of conviction entered pursuant to a guilty plea of three counts of robbery with use of a deadly weapon. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, District Judge.

Sullivan first argues on appeal that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea without first conducting an evidentiary hearing.¹ 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

¹The State argues that Sullivan’s plea agreement waived his ability to directly appeal. Sullivan’s motion alleged he had a fair and just reason to withdraw his plea because it was not entered knowingly and voluntarily. Because Sullivan challenges the validity of his plea in this appeal, we do not apply the waiver contained in the plea agreement. *See Aldape v. State*, 139 Nev., Adv. Op. 42, 535 P.3d 1184, 1188 (2023) (providing that one of the elements for determining whether a defendant has waived his direct appeal by way of a waiver clause is whether “both the waiver *and plea agreement* were entered into knowingly and voluntarily” (emphasis added)).

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

In his motion, Sullivan claimed that he had a fair and just reason to withdraw his plea because he thought he was agreeing to a plea deal that provided for a stipulated three-to-eight-year sentence. Sullivan alleged he had a “confused mind” when he entered his plea because the State made four different plea offers to him on the same day he entered his plea, including the above offer he thought he was taking, and because counsel had Sullivan sign the agreement without reviewing it with him.²

²Sullivan argues on appeal that there are additional fair and just reasons to support withdrawing his plea, including (1) factual allegations contained in his unfiled pro se motion to withdraw, (2) in-court statements his attorney made after the entry of Sullivan’s plea, (3) the confusing terms of the written plea agreement, (4) his serious mental health issues as

The district court orally stated its findings that “the plea canvas was pretty thorough [as] regards the sentence that was on the table.” The court also found that Sullivan was questioned as to whether he understood the sentence he was facing and that his answer did not suggest he believed he was accepting an offer of three to eight years in prison. These findings are supported by substantial evidence in the record.

The plea agreement explained Sullivan was pleading guilty to three counts of robbery with use of a deadly weapon and that the district court must sentence Sullivan to a term of imprisonment “for a minimum of not less than two (2) years and a maximum term of not more than fifteen (15) years plus a consecutive term of one (1) to fifteen (15) years for the deadly weapon enhancement.” The plea agreement did not describe a stipulated sentence, and it explained that Sullivan had not been guaranteed a particular sentence. During the plea canvass, Sullivan stated that he understood the proceedings and had read, understood, and signed the plea agreement. The court asked Sullivan if he understood that “the punishment for a robbery is a minimum of 2 years and a maximum of 15 years,” “there is a consecutive period for no less than 1 year but no more than 15 for the weapon,” and the sentencing decision was up to district court. Sullivan acknowledged that he understood, and despite the district court’s references

reflected in the presentence investigation report (PSI), and (5) the inadequate plea canvass. We decline to consider these arguments as they were not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

only to terms of 1 to 15 and 2 to 15 years, he did not inquire about any sentence of 3 to 8 years.

In light of his responses at the plea canvass, Sullivan failed to allege specific facts that are not belied by the record and, if true, demonstrated a fair and just reason to permit withdrawal of his plea. See *State v. Langarica*, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (declining to grant relief where doing so “would be reducing the guilty plea canvas to a mere pro forma routine colloquy” (internal quotation marks omitted)). Therefore, we conclude Sullivan has not demonstrated the district court abused its discretion by denying his motion to withdraw his plea without first conducting an evidentiary hearing.

Sullivan also argues on appeal that the State violated the terms of the plea agreement by arguing for a 36-to-90-year sentence. Sullivan contends that this constitutes a breach because the plea agreement only stated that Sullivan could be sentenced to a 2-to-15-year sentence for robbery and a 1-to-15-year sentence for the deadly weapon enhancement and neither the agreement nor the court informed Sullivan that the sentence could apply to all three counts. Sullivan also alleges the district court exceeded its jurisdiction by imposing a sentence outside the statutory maximum “under the terms of the GPA.”


Sullivan did not object to these alleged errors at the sentencing hearing below, and he does not argue on appeal that they constitute plain error. We thus conclude he has forfeited these claims, and we decline to review them on appeal. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018); *Sullivan v. State*, 115 Nev. 383, 387 & n.3, 990 P.2d 1258, 1260 & n.3 (1999) (noting that plain-error review applies to an unpreserved claim

that the State breached the plea agreement); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error).

Finally, the State argues that the district court erred by granting Sullivan postconviction relief on his appeal deprivation claim without first conducting an evidentiary hearing. That ruling is not currently before this court as this appeal challenges only the judgment of conviction. Accordingly, we decline to address the State's argument.

For the reasons discussed above, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Karen A. Connolly, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk