

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO JAVIER ARCE-FRANCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89403-COA

FILED

JUL 15 2025

ELIZABETH A. BROWN,
CLERK OF SUPREME COURT,
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Francisco Javier Arce-Franco appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of burglary. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Arce-Franco argues the district court erred by denying his presentence motion to withdraw his plea. A defendant may move to withdraw a guilty plea² before sentencing, NRS 176.165, and the district court may grant the motion “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.

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

²An *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).

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Further, 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 . . . discretion." *State v. Second Jud. Dist. Ct. (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

In his motion, Arce-Franco claimed he had a fair and just reason to withdraw his plea because, shortly after entering his plea, he found out he would lose his job and learned the "full range" of probation conditions required by NRS 176A.410.³ As to the NRS 176A.410 conditions, Arce-Franco specifically argued: (1) he did not want to participate in the professional counseling mandated by NRS 176A.410(e); (2) that compliance with NRS 176A.410 would "severely constrain[]" his liberty and limit his choices regarding where to live; and (3) that compliance with NRS 176A.410 would be invasive because he would have to take polygraph tests.

The district court found that: (1) the State and Arce-Franco engaged in lengthy settlement negotiations after Arce-Franco had been charged with multiple counts of sexual assault of a minor under 14 years of age and lewdness with a child under the age of 14; (2) "there was a fair amount of discussion [prior to the entry of Arce-Franco's plea] about the requirements of NRS 176A.410"; (3) Arce-Franco took the plea deal, in which the State agreed to not oppose the grant of probation, to avoid the potential for a large sentence and deportation; and (4) the court would not impose subsections (g) (submit to polygraph tests), (m) (cannot be within 500 feet of a place designed for children) and (q) (cannot possess an

³Pursuant to the plea agreement, the State agreed to not oppose a four-year term of probation and Arce-Franco agreed to comply with the statutory probation conditions outlined in NRS 176A.410.

electronic device capable of accessing the internet) of NRS 176A.410 to address Arce-Franco's concerns.⁴

Arce-Franco contends this court should not defer to the district court's factual findings because it applied the wrong legal standard to his motion by focusing solely on the validity of his plea. *See Stevenson*, 131 Nev. at 603, 354 P.3d at 1280-81 (disavowing an "exclusive focus on the validity of the plea" when considering a presentence motion to withdraw a guilty plea and "affirm[ing] that the district court must consider the totality of the circumstances to determine whether permitting withdrawal . . . would be fair and just"). We disagree. The district court specifically acknowledged prior to denying Arce-Franco's motion that "it must consider the totality of the circumstances to determine whether permitting withdrawal of a Guilty Plea Agreement before sentencing would be fair and just." Ultimately, the district court concluded that, based on the totality of the circumstances, Arce-Franco failed to demonstrate a fair and just reason to withdraw his plea. While the district court may have at times used imprecise language regarding the standard it was to apply to Arce-Franco's motion, the record as a whole demonstrates the district court applied the correct legal standard to the motion. Therefore, we conclude the district court did not abuse its discretion by denying the motion to withdraw his plea.

Arce-Franco also argues the district court plainly erred by imposing the statutory requirements of NRS 176A.410 as a condition of his probation because he was not convicted of a sexual offense. As is discussed above, Arce-Franco agreed to comply with the statutory probation conditions outlined in NRS 176A.410 in exchange for his favorable plea deal

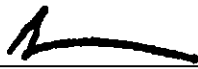
⁴We note the district court did require Arce-Franco to participate in professional counseling as mandated by NRS 176A.410(e).

after lengthy settlement negotiations and discussion regarding the requirements of NRS 176A.410. In light of Arce-Franco's decision to agree to the probation conditions outlined in NRS 176A.410 as part of his plea deal, he cannot challenge the imposition of those conditions on appeal. *Cf. Burns v. State*, 137 Nev. 494, 504, 495 P.3d 1091, 1102-03 (2021) (concluding that, because Burns received the benefit of his plea deal when he was sentenced to a stipulated term of imprisonment, he could not challenge the sentence on appeal).

Even were we to review Arce-Franco's claim, he is not entitled to relief. The district court has broad discretion to impose conditions of probation. *See* NRS 176A.400(1) (listing "without limitation" various terms and conditions the court may impose when granting probation); *see also Igbiovvia v. State*, 111 Nev. 699, 707, 895 P.2d 1304, 1309 (1995) ("[A] district court judge enjoys wide discretion under grants of authority to impose . . . conditions [on probation]."). While the conditions outlined in NRS 176A.410 are mandated for certain convictions, nothing in the statute indicates the conditions cannot be imposed, pursuant to the district court's discretion, for other convictions. Given the district court's broad discretion to impose conditions of probation, Arce-Franco has not shown the district court could not exercise that discretion and impose the conditions outlined in NRS 176A.410. Further, the record shows the district court exercised its discretion by considering the various conditions in the statute and by imposing only those conditions that it thought were warranted in Arce-Franco's case. In light of these circumstances, we conclude the district court did not plainly err by imposing certain conditions outlined in NRS 176A.410 as part of Arce-Franco's probation. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (describing the requirements an appellant must show

to demonstrate plain error). Therefore, Arce-Franco is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Goodwin Law Group, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk