

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY ZUCCARO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89524-COA

FILED

JUL 30 2025

ELIZABETH A. EAGLE
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Zuccaro appeals from a judgment of conviction, entered pursuant to an *Alford*¹ plea, of making threats or conveying false information concerning an act of terrorism. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Zuccaro argues the district court erred by denying his presentence motion to withdraw his plea. He contends the record clearly shows that he was uncomfortable and did not understand what was occurring during the entry of his plea and that there were cognitive issues such that his plea was not freely and voluntarily entered because of his mental state. 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

¹*North Carolina v. Alford*, 400 U.S. 25 (1970). We note that an *Alford* plea is the 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).

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).

In his motion, Zuccaro claimed he had a fair and just reason to withdraw his plea because his plea was not voluntarily, knowingly, and intelligently entered. Zuccaro alleged he suffered from an unmedicated anxiety disorder and sleep deprivation that “affected his ability to fully understand and comprehend what was going on at the time of the plea canvass.” A guilty plea is presumptively valid, and the defendant carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). “This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea.” *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). “A court must be able to conclude from the oral canvass, any written plea memorandum and the circumstances surrounding the execution of the memorandum (*i.e.*, did the defendant read it, have any questions about it, etc.) that the defendant’s plea was freely, voluntarily and knowingly made.” *Id.* at 1106, 13 P.3d at 448.


At the plea canvass, Zuccaro answered the questions of the district court appropriately and indicated he understood everything in the plea agreement prior to signing it. In addition, Zuccaro asked appropriate, probing questions during the plea canvass, including a question about why one might be denied entry into the mental health court program and multiple questions about high-level probation supervision. Before entering his plea, Zuccaro recognized he was hesitating because it was a "big decision" but ultimately stated he had determined entering his plea was in his best interests and he was making the decision to enter his plea willfully, voluntarily, and freely. Importantly, the court asked Zuccaro about his mental health issues, and Zuccaro represented that he was in a good state of mind and that his mental health issues did not impact his ability to comprehend or understand what the court asked him. In light of these circumstances, Zuccaro failed to demonstrate his plea was not knowingly and voluntarily entered. Therefore, we conclude the district court did not abuse its discretion by denying Zuccaro's motion based on this claim.

Zuccaro also argues the statutes he was prosecuted under are unconstitutionally vague.² The State argues, and Zuccaro does not dispute, that Zuccaro waived his right to appeal the constitutionality of the statutes he was prosecuted under as part of his plea agreement. As is discussed above, Zuccaro failed to demonstrate that his plea was not made knowingly and voluntarily. And he fails to argue that his claim is outside the scope of the waiver, that he reserved the right to raise the issue on appeal, or that denying him the right to appeal would work a miscarriage of justice.

²The information charged Zuccaro with making threats or conveying false information concerning an act of terrorism in violation of NRS 202.448 and NRS 202.4415.

Therefore, we conclude Zuccaro's claim is waived. *See Burns v. State*, 137 Nev. 494, 499-500, 495 P.3d 1091, 1099-1100 (2021). For these reasons, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
American Freedom Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk