

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILL HENRY HARLAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62263

FILED

NOV 13 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an *Alford* plea<sup>1</sup>, of second-degree murder. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant argues that the district court erred by denying his presentence motion to withdraw his *Alford* plea because his plea was unknowing and involuntary on the ground that counsel failed to provide him with an autopsy report before he pleaded guilty.<sup>2</sup> Appellant contends that the autopsy report's description of the trajectory of the bullet into the victim's body supported a self-defense theory and that he would not have pleaded guilty had he received the autopsy report before entering his guilty plea. NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a

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<sup>1</sup>We note that the judgment of conviction indicates that appellant pleaded guilty where the record shows that he pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).


<sup>2</sup>Appellant mentions in his motion below and on appeal that he was not provided the NMS Labs Toxicology report or the UMC registration form. However, he does not explain the significance of these documents to his argument and his focus at the evidentiary hearing and on appeal centers on the autopsy report aspect of his claim of error.

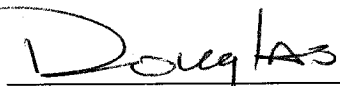
motion in its discretion for any substantial reason that is fair and just. *State v. Second Judicial Dist. Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). “On appeal from a district court’s denial of a motion to withdraw a guilty plea, this court ‘will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court’s determination absent a clear showing of an abuse of discretion.’” *Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).


After conducting an evidentiary hearing on the motion, the district court considered the appropriate legal authority and the totality of the circumstances and found that appellant had been provided the autopsy report, had discussed it with counsel, and had “information available to him on the very issues now being raised” before entering his guilty plea. And where, as here, the district court’s factual findings are supported by substantial evidence, we give deference to them. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); *see generally Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (observing that this court gives deference to a district court’s factual findings if they are supported by substantial evidence and are not clearly wrong). Further, the district court was the sole judge of the credibility of the witnesses who testified at the evidentiary hearing—appellant and his two counsel. *See Molina*, 120 Nev. at 192, 87 P.3d at 538; *see generally Mulder v. State*, 116 Nev. 1, 15, 992 P.2d 845, 853 (2000) (“The trier of fact determines the weight and credibility to give conflicting testimony.”). We therefore conclude that

appellant has not shown that the district court abused its discretion by denying his motion to withdraw his guilty plea.<sup>3</sup> Accordingly, we

ORDER the judgment of conviction AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Saitta

<sup>3</sup>Appellant also contends that his guilty plea was involuntary and unknowing due to the individual and cumulative effect of errors in addition to the denial of his motion to withdraw his guilty plea, including that conflicting testimony and evidence were presented at the preliminary hearing, the district court improperly overruled the justice court's bind-over on second-degree murder rather than the open murder charge, the district court failed to conduct a preliminary hearing after reinstating the open murder charge, the district court improperly allowed the State to present charges of battery and mayhem concerning a single victim, and the district court erroneously denied his petition for a writ of habeas corpus. However, those grounds were not presented to the district court below, and therefore we will not consider them in the first instance. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that this court need not consider arguments raised on appeal that were not presented to the district court in the first instance), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004). Moreover, these alleged errors occurred before entry of the plea and we were waived when appellant entered his *Alford* plea. See *Tollett v. Henderson*, 411 U.S. 258 (1973); *Webb v. State*, 91 Nev. 469, 538 P.2d 164 (1975).

<sup>4</sup>Despite counsel's verification that the fast track statement and fast track response comply with applicable formatting requirements, they do not comply with NRAP 32(a)(4) because they are not double-spaced. See NRAP 3C(h)(1). Appellant's certificate of compliance is deficient because it does not indicate the number of words contained in the brief and the brief is not less than 15 pages. See NRAP 32(a)(7), (8); NRAP 3C(e)(1)(B). We caution counsel that future failure to comply with the Nevada Rules of Appellate Procedure when filing briefs with this court may result in the imposition of sanctions. See NRAP 3C(n); NRAP 28.2(b).

cc: Hon. Douglas W. Herndon, District Judge  
Legal Resource Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk