

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDRE JOSEPH HARDIMAN A/K/A
ANDRE JOSEPH KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66296

FILED

SEP 15 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of first-degree murder, invasion of the home, burglary, and robbery. Eighth Judicial District Court, Clark County; David B. Barker, Judge.¹

Appellant Andre Hardiman claims the district court abused its discretion by denying his motion to withdraw his guilty plea without a full review of the record and an evidentiary hearing.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a motion for any substantial reason that is "fair and just," *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). To this end, the Nevada Supreme Court has recently ruled that "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," and it has disavowed the

¹The Honorable Nancy Becker, Senior Judge, heard argument and ruled on Hardiman's pro se motions to withdraw his guilty plea and dismiss current counsel.

standard previously announced in *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001), which focused exclusively on whether the plea was knowing, voluntarily, and intelligently made. *Stevenson v. State*, 131 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 61, August 13, 2015 at 8). In making its determination, the district court is required to conduct an evidentiary hearing if a defendant raises claims that are not belied by the record and would, if true, entitle him to relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Here, Hardiman filed a pro se motion to withdraw his guilty plea, which alleged that defense counsel coerced him into pleading guilty to first-degree murder. The district court considered the parties' pleadings, the documents on file, and a video recording of the plea canvass before making the following findings: Hardiman acknowledged that he carefully read the written plea agreement, defense counsel answered his questions about the agreement, and he signed the agreement voluntarily and did not act under duress or coercion. Judge Barker thoroughly canvassed Hardiman regarding his plea. Hardiman orally indicated he was not forced or coerced into entering the plea. After defense counsel cleared-up some confusion about the sentencing possibilities, Hardiman stated that he wished to proceed with the plea canvass. Hardiman was actively engaged during the plea canvass and asked numerous questions. Hardiman's subsequent allegations of coercion are belied by the record and no grounds exist for conducting an evidentiary hearing. And even if the statements he attributed to defense counsel were made, they did not constitute coercion.

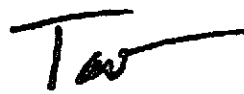
The record supports the district court's findings and the findings support our conclusion that Hardiman failed to present a fair and just reason for withdrawing his guilty plea. *See generally Gardner v. State*, 91 Nev. 443, 446, 537 P.2d 469, 471 (1975) (defendant bears the


burden of proving he in fact was coerced). Accordingly, the district court did not abuse its discretion in this regard.

Hardiman also claims the district court abused its discretion by denying his pro se motion to dismiss his counsel. "We review the denial of a motion for substitution of counsel for abuse of discretion. A defendant's right to substitution of counsel is not without limit. Absent a showing of adequate cause, a defendant is not entitled to reject his court-appointed counsel and request substitution of other counsel at public expense." *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (internal footnotes omitted). In his motion, Hardiman claimed that an actual conflict of interest existed because defense counsel did not file any pretrial motions and successfully coerced him into pleading guilty to first-degree murder. The district court found that Hardiman's coercion claim was belied by the record and denied his motion to dismiss counsel. We conclude from our review of the record that Hardiman failed to demonstrate adequate cause for substitution of counsel and therefore the district court did not abuse its discretion in this regard.

Having concluded Hardiman is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David B. Barker, District Judge
Andrea L. Luem
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk