

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VALIANT MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67684

FILED

JAN 21 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *D. Williams*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of robbery with the use of a deadly weapon with a victim 60 years or older, robbery with the use of a deadly weapon, conspiracy to commit robbery, and possession of credit or debit card without cardholders consent. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Valiant Moore claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. 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 "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 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. \_\_\_, \_\_\_, 354 P.3d 1277, 1281 (2015).

Here, Moore filed a presentence motion to withdraw his guilty plea, which alleged counsel was ineffective for failing to properly explain the charges and the penalties he faced, do an adequate investigation, or file a motion to sever his trial from that of his codefendants.

The district court conducted an evidentiary hearing and heard testimony from Moore's original counsel, the defense investigator, and Moore. Counsel testified that she spoke with Moore numerous times regarding the charges, the potential penalties, and the likely outcome at trial and sentencing given the charges. Counsel and the investigator testified Moore's alibi defense was investigated and the alibi witnesses either refused to testify or could not testify with any certainty that Moore was at the party that night. Further, counsel testified Moore never told her about Deandre Thomas, and therefore, Thomas was not contacted.<sup>1</sup> Finally, counsel testified she did not file a motion to sever the trial because she was waiting to see whether Moore and his codefendants were going to plead guilty before filing a motion to sever.

The district court concluded counsel was credible and Moore's testimony was not credible. The district court also found that counsel adequately explained the charges and possible sentences, was forthright

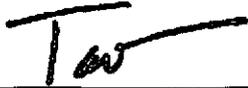
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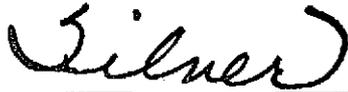
<sup>1</sup>To the extent Moore claims counsel should have contacted Thomas because he was mentioned in Moore's voluntary statement, Moore failed to provide this court with a copy of the voluntary statement. The burden is on Moore to provide an adequate record enabling this court to review assignments of error. *Thomas v. State*, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004); *see also Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). Therefore, we decline to consider this claim on appeal.

about the likely outcome at trial in light of the evidence, did an adequate investigation into the alibi defense, and did not err by failing to file a motion to sever while plea negotiations were ongoing. The district court's decision is supported by the record and the district court applied the correct standard in denying the motion. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting the test in *Strickland*); see also *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Accordingly, we conclude the district court did not abuse its discretion by denying Moore's motion, and we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Carolyn Ellsworth, District Judge  
Oronoz & Ericsson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk