IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANTHONY BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70485

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to an *Alford*[1] plea of burglary and battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Deanthony Brown claims "[t]he district court erred by denying [his] oral request to withdraw his guilty plea prior to sentencing without appointing alternative counsel to further investigate his allegations of ineffective assistance of counsel and conduct an evidentiary hearing to further investigate those claims."

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. ___, ___, 354 P.3d 1277, 1281 (2015). To this end, the Nevada

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

Supreme Court recently 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 knowingly, voluntarily, and intelligently made, and affirmed 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." *Stevenson*, 131 Nev. at ___, 354 P.3d at 1281.

At sentencing, Brown indicated he wanted to withdraw his guilty plea because he was not informed that his victims would be allowed to come to court and speak at his sentencing. Defense counsel stated she received notice of the victim speakers and informed Brown of the notice, but she did not discuss the possibility of victim speakers with him prior to the entry of his plea. The district court concluded Brown's ignorance of the possibility of victim speakers was not a basis for withdrawing his *Alford* plea because defense counsel would not have known at the time he entered his plea whether any victim speakers would be present at sentencing. The district court further observed that notice of victim speakers was a purely legal issue and did not require any investigation outside of the record.

We conclude the district court did not err in denying Brown's motion to withdraw his guilty plea without appointing alternative counsel and conducting an evidentiary hearing. Brown did not make a threshold showing of ineffective assistance of counsel, *see Strickland v. Washington*, 466 U.S. 668, 687 (1984), and he did not demonstrate an evidentiary

hearing was warranted, *see generally Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk