

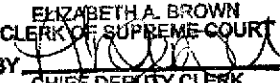
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EARL KENJI ALEXANDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71304

FILED

MAR 22 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Earl Kenji Alexander appeals from a judgment of conviction, pursuant to a guilty plea entered according to *North Carolina v. Alford*, 400 U.S. 25 (1970), of sexual assault and incest. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Alexander argues the district court erred in denying his presentence motion to withdraw his guilty plea. 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). In considering the motion, “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.” *Id.*

In his motion, Alexander asserted he should be entitled to withdraw his plea because his counsel did not explain the terms of the plea agreement, he is not guilty of the charged crimes, and he was coerced into accepting the plea agreement. A review of the record reveals, during the initial plea canvass, Alexander grew extremely emotional and made

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assertions indicating he did not understand the plea agreement. The district court chose not to accept the plea at that time and continued the matter until later that day to permit the parties to ascertain whether Alexander would go forward with the plea agreement.

After that delay, the parties returned and Alexander informed the district court he wished to accept the State's plea offer. Alexander further informed the district court he had discussed the matter with his counsel, he wished to enter an *Alford* plea, and asserted that no one had forced him to accept the plea offer. And by entering an *Alford* plea, Alexander maintained his innocence, but acknowledged the State had sufficient evidence to convict him and he sought to receive the benefit of the plea bargain. Alexander's counsel also advised the court that counsel had discussed the plea offer with Alexander.


At the hearing concerning Alexander's motion to withdraw guilty plea, the district court stated it had reviewed the record and concluded the totality of the circumstances demonstrated Alexander's motion lacked merit. The record supports the district court's conclusion and we determine Alexander has not demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea. *See Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).


Alexander also appears to assert the district court's decision to deny the motion is not entitled to deference because Judge Earley considered and denied the motion, but Judge Barker presided over the plea canvass, and thus, Judge Earley was not in a good position to determine the validity of Alexander's claims. Alexander did not object to Judge Earley's consideration of his motion, and thus, no relief is warranted absent a demonstration of plain error. *See Valdez v. State*, 124


Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under the plain error standard, we determine “whether there was error, whether the error was plain or clear, and whether the error affected the defendant’s substantial rights.” *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

A review of the transcript of the hearing concerning the motion to withdraw guilty plea reveals Judge Earley stated she had “read everything” and also watched the recording of the plea canvass, and then denied the motion. As Judge Earley demonstrated she had appropriately reviewed the record when she considered and denied Alexander’s motion, Alexander does not demonstrate Judge Earley erred in considering the motion or that her findings were entitled to a lesser standard of appellate review. Therefore, Alexander fails to demonstrate he is entitled to relief for this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Carmine J. Colucci & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk