

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BYRON CHARLES GRESHAM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72822

**FILED**

DEC 13 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Byron Charles Gresham appeals from a judgment of conviction, pursuant to a guilty plea, of possession of a controlled substance. Eleventh Judicial District Court, Mineral County; Jim C. Shirley, Judge.

Gresham 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, Gresham asserted he was factually innocent and his initial counsel promised he would be sentenced to drug court. The district court conducted an evidentiary hearing regarding the motion and Gresham testified. Gresham testified he did not commit the crime, his girlfriend actually committed the crime, and he merely pleaded guilty to protect his girlfriend from punishment. Gresham further testified his counsel promised him he would be sentenced to drug court.

At the conclusion of the evidentiary hearing, the district court found Gresham not to be credible regarding his assertions of innocence because he had made contradictory statements during the court proceedings and because the record in this matter demonstrated Gresham at minimum was in constructive possession of the controlled substances discovered in his bedroom. The district court further found Gresham was informed of the possible sentences he faced and that the sentencing court was not bound to follow the sentencing recommendations made by the parties. The district court also found Gresham had previously asserted he had not been promised a particular sentence in exchange for his guilty plea and Gresham's testimony at the evidentiary hearing regarding counsel's sentencing promises were not credible. The district court concluded the totality of the circumstances did not demonstrate a fair and just reason to permit Gresham to withdraw his guilty plea.

We conclude Gresham 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). Therefore, Gresham fails to demonstrate he is entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Jim C. Shirley, District Judge  
David Kalo Neidert  
Attorney General/Carson City  
Mineral County District Attorney  
Mineral County Clerk