

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIAN DEVINCENT HAMILTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72711

FILED

APR 11 2018

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

ORDER OF AFFIRMANCE

Julian Devincent Hamilton appeals from a judgment of conviction, pursuant to a guilty plea, for battery with use of a deadly weapon. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Hamilton contends the district court erred by not allowing him to withdraw his guilty plea and by not granting an evidentiary hearing on the matter. Hamilton indicated his desire to withdraw his guilty plea in two jail inquiry forms, which the jail forwarded to the Second Judicial District Court. The inquiries appear to have been made after Hamilton was taken into custody for failing to appear for his sentencing hearing. The district court filed the inquiries prior to Hamilton's ultimate sentencing hearing. At that hearing, Hamilton did not indicate he wished to withdraw his guilty plea, nor did the district court raise the issue. The underlying issue here is whether the inquiries were filings on which the district court was required to act. If they were not, then the district court cannot have erred. If they were, we must then determine whether the district court erred in failing to hold an evidentiary hearing or address the claims.

Hamilton did not file a written motion to withdraw his guilty plea. NRS 176.165 addresses “[w]hen a plea of guilty . . . may be withdrawn” and indicates it may be so upon “a motion to withdraw a guilty plea.” Motions filed in the district court “shall contain a notice of motion . . . with due proof of the service of the same.” District Court Rule 13. Hamilton’s inquiries did not satisfy the requirements for a motion as they did not contain a notice of motion or indicate they were served on the opposing party.

Hamilton also failed to make an oral motion to withdraw his guilty plea. At his sentencing hearing, Hamilton’s allocution covered six transcript pages, indicating a significant opportunity in which he could have raised his desire to withdraw his guilty plea. But Hamilton in no way indicated to the court such a desire.

Hamilton cites several cases discussing a district court’s duty to hold an evidentiary hearing and/or rule on a motion to withdraw a guilty plea. But the factual circumstances involved in the cited authorities are clearly distinguishable from the case at bar. In all but two of those cases, the defendants had clearly moved the district court to withdraw their pleas. Of the remaining two, one arose in postconviction proceedings and the other did not say how the matter came before the district court. Hamilton cites no authority in support of his implicit argument that inquiries made through the jail communication system and subsequently forwarded to the district court constitute motions on which the district court has a duty to act. We therefore conclude the district court did not err by not raising or ruling on the inquiries prior to sentencing.


Moreover, as a separate and independent ground to deny relief, even if the district court should have acted on the inquiries, the error was


harmless. See NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”).

In his inquiry filed on February 24, 2017, Hamilton simply indicated he had made multiple requests to withdraw his plea and he “still would like to do that.” His bare assertion gave no indication that granting his request “would be fair and just.” *Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015); see *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). In his subsequent inquiry filed on March 3, 2017, he indicated he was threatened into entering a guilty plea by counsel’s statement that the district attorney would charge him as a habitual criminal. The record demonstrates Hamilton potentially faced habitual criminal treatment, and counsel’s candid advice about the potential disadvantages of rejecting a guilty plea offer is not a threat. Thus, Hamilton would not have been entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Scott N. Freeman, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk