

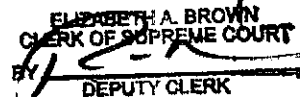
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA MICHAEL ALBERICCI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72947

**FILED**

MAR 14 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joshua Michael Albericci appeals from a judgment of conviction, pursuant to a guilty plea, for attempted burglary, attempted assault with the use of a deadly weapon, and ex-felon in possession of a firearm. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.


Albericci contends the district court erred by denying his 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). We give deference to the findings of the district court so long as they are supported by the record. *Id.*


In his motion, Albericci claimed his plea should be withdrawn because it was entered on the misadvice of counsel. Albericci claimed that, at the time of his plea, he was anxious to either get out of jail or go to trial, but the State would not agree to a bail reduction and counsel was unavailable for the scheduled trial date and would have to move to continue

it for two months. Albericci claimed counsel told him the State would stipulate to a lower bail if he entered a guilty plea pursuant to negotiations (to one count of ex-felon in possession of a firearm) and Albericci could then withdraw his guilty plea as a matter of right any time before sentencing in order to proceed to trial at a date more convenient to counsel.

The district court held an evidentiary hearing on Albericci's motion to withdraw. The district court found, under the totality of the circumstances, there was no fair or just reason to allow Albericci to withdraw his plea. The district court found Albericci's claims to be at odds with his sworn statements during the guilty plea colloquy, and it found compelling counsel's testimony that he would never endorse, advise, or encourage such a plan. Finally, the district court found no sufficient, credible evidence supported Albericci's allegations that counsel devised the plead-then-withdraw plan. We conclude the district court's findings are supported by the record, and the district court did not abuse its discretion by denying this claim. *See id.* at \_\_\_, 354 P.3d at 1282 ("Permitting [the defendant] to withdraw his plea under the circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim." (internal quotation marks omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Thomas W. Gregory, District Judge  
Kristine L. Brown  
Attorney General/Carson City  
Douglas County District Attorney/Minden  
Douglas County Clerk