

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORRY ALEXIS HAWKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71590

FILED

DEC 28 2017

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

ORDER OF AFFIRMANCE

Corry Alexis Hawkins appeals from a judgment of conviction, entered pursuant to a guilty plea, of conspiracy to commit murder, burglary while in possession of a deadly weapon, murder with the use of a deadly weapon, and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Hawkins claims the district court erred by denying his presentence motion to withdraw his guilty plea. Specifically, he claimed his plea should be withdrawn because counsel informed the district court about a week before trial they would be ineffective if the trial was to proceed because they only recently became aware Hawkins' co-defendant was going to testify Hawkins was the shooter. Hawkins claimed these statements coupled with the fact counsel failed to investigate his codefendant caused him to plead guilty. Hawkins also claimed his plea should be withdrawn because counsel failed to communicate with him and provide him with his discovery.

The district court held an evidentiary hearing on Hawkins' claims. At the evidentiary hearing, counsel testified they only did a cursory background check into the codefendant because, while they believed she

would be an adverse witness to Hawkins, they did not know she was going to testify Hawkins was the shooter. Counsel testified they did not feel comfortable cross-examining the codefendant because of the lack of investigation but they also testified they did have some information, such as the codefendant's drug use and numerous conflicting statements to the police, with which to impeach her. Further, one of Hawkins' counsel talked to him about the impact of the codefendant's testimony when discussing whether to plead guilty or not. Counsel also testified they encouraged Hawkins to plead guilty based on the composition of the jury venire. They did not believe this was a favorable jury for receiving less than the death penalty.

As to the communication issue, one of Hawkins' counsel testified she told him she did not like to give defendants copies of discovery because of the possibility other inmates might use his discovery against him. She testified Hawkins agreed not to receive his discovery for this reason. Further, counsel testified they reviewed discovery with him and, if he had questions about specific pieces of evidence, they discussed them with him. Hawkins largely agreed with this portion of the testimony from counsel but stated he did not have a cellmate and there was no danger of his discovery being used against him.

At the conclusion of the hearing, the district court made the following findings: counsel exaggerated her ineffectiveness at the motion for continuance of trial; counsel had done some investigation of the codefendant; counsel knew the codefendant was going to testify against Hawkins, they just did not know the substance of the testimony; there was ample information in the record to impeach the codefendant with, including the codefendant's conflicting statements to the police and her drug use; the

codefendant did not have a criminal history; Hawkins failed to demonstrate what other evidence counsel could have found to attack the credibility of the codefendant; counsel did not like the jury venire; Hawkins was not challenging the understanding and knowing nature of the plea; and Hawkins had two days to consider the plea and had time prior to pleading to speak to his family. Based on these findings, the district court found counsel was not ineffective and there was no fair or just reason to withdraw the 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). “[T]he 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.* We give deference to the findings of the district court so long as they are supported by the record. *Id.*

“A defendant who pleads guilty upon the advice of counsel may attack the validity of the guilty plea by showing that he received ineffective assistance of counsel under the Sixth Amendment to the United States Constitution.” *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). Guilty pleas are presumptively valid and the “defendant has a heavy burden to show the district court that he did not enter his plea knowingly, intelligently, or voluntarily.” *Id.* “To establish prejudice in the context of a challenge to a guilty plea based upon an assertion of ineffective assistance of counsel, a defendant must demonstrate a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have

insisted on going to trial.” *Id.* at 190-91, 87 P.3d at 537 (internal quotation marks omitted).

Based on the testimony provided at the evidentiary hearing, we conclude the district court’s findings are supported by the record. Hawkins failed to demonstrate counsel were ineffective such that he did not enter his plea knowingly, intelligently, or voluntarily. He discussed his plea with counsel and counsel explained what the codefendant’s testimony would mean to his trial. Counsel, while not having done a thorough investigation into the codefendant, had several avenues of cross-examination to pursue had the case gone to trial. Further, Hawkins failed to demonstrate what evidence would have been produced had counsel done further investigation. Finally, Hawkins failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Aside from the codefendant issue, counsel also recommended Hawkins plead guilty based on counsels’ assessment of the jury venire. Hawkins did not address this below or in his brief on appeal. The burden is on Hawkins to demonstrate he would not have pleaded guilty and would have insisted on going to trial. Therefore, we conclude the district court did not abuse its discretion by denying this claim.

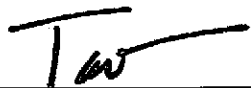
Hawkins also claimed his plea should be withdrawn because counsel failed to communicate with him and provide him with his discovery. Specifically, he claimed counsel failed to inform him he had a strong mitigation case for sentencing and failed to review information relating to the trial and penalty phases of his case. Hawkins asserts had he known this information, he would not have agreed to plead guilty to all of the charges in exchange for removal of the death penalty as a sentencing option. Testimony given at the hearing established both counsel and the

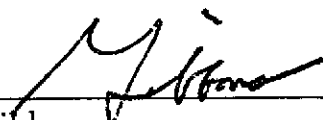
investigator met with Hawkins often, both counsel and the investigator went through the discovery with Hawkins, and Hawkins never requested copies of his discovery. Hawkins failed to demonstrate how the failure to provide him with his discovery, or how information contained in the discovery, would have altered his decision to plead guilty. Therefore, the district court did not abuse its discretion by denying this claim.

We conclude the district court did not abuse its discretion by finding Hawkins failed to demonstrate a fair and just reason for withdrawing his guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Law Offices of Andrea L. Luem
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk