

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO GAMBOA-CRUZ, A/K/A MARIO
ALBERTO GAMBOCRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73548

FILED

JUN 13 2018

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

ORDER OF AFFIRMANCE

Mario Gamboa-Cruz appeals from a judgment of conviction entered pursuant to an *Alford*¹ plea of first-degree murder. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Gamboa-Cruz argues the district court erred by denying his presentence motion to withdraw his *Alford* 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, Gamboa-Cruz claimed he should be entitled to withdraw his plea because his counsel was ineffective for failing to ensure he understood the terms of the plea agreement and for coercing him into


¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

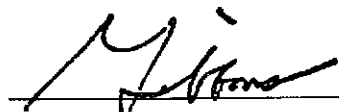
accepting the plea agreement. Gamboa-Cruz argued he mistakenly believed he would receive presentence credits from 2010, rather than from 2012, and mistakenly believed he would only serve 15 years in prison and then be deported to Mexico. Gamboa-Cruz claimed this misunderstanding stemmed from his language barrier and counsel's failure to use an appropriate interpreter. Gamboa-Cruz also asserted his counsel coerced him into accepting the plea agreement by telling him he would lose at trial and spend the rest of his life in prison.

The district court conducted an evidentiary hearing regarding these issues. The district court found both Gamboa-Cruz and his initial counsel testified they utilized a Spanish-language interpreter when meeting together and utilized the interpreter to review the plea agreement. The district court noted Gamboa-Cruz testified he understood the interpreter. In light of the testimony regarding the interpreter and the remainder of the record, the district court found Gamboa-Cruz' testimony that he did not understand the agreement as it related to presentence credits to be incredible, particularly in light of a specific term informing him he would receive presentence credits only from 2012. The district court also concluded Gamboa-Cruz' testimony regarding his confusion concerning the potential length of his sentence to be incredible and that the record demonstrated he understood the potential penalties he faced when he entered his plea. Finally, the district court found counsel's candid advice regarding the potential outcome had Gamboa-Cruz proceeded to trial and sentencing on the original charges did not amount to improper coercion. The district court concluded Gamboa-Cruz failed to demonstrate a fair and just reason to withdraw his plea and denied the motion.

The record before this court supports the district court's conclusion and we conclude Gamboa-Cruz 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, Gamboa-Cruz fails to demonstrate he is entitled to relief and we ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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