

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON ALEXANDER HAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73467

FILED

JUN 13 2018

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

ORDER OF AFFIRMANCE

Brandon Alexander Han appeals from a judgment of conviction entered pursuant to a guilty plea of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Han argues the district court erred by denying his presentence motion to withdraw his guilty plea without conducting an evidentiary hearing. 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.* “[W]hen the defendant’s claims are belied by the record or not supported by specific facts, which, if true, would entitle him to relief, the district court may reject a claim without conducting an evidentiary hearing.” *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).

In his motion, Han claimed he should be entitled to withdraw his guilty plea because he entered it under duress and he was not guilty of the crime. In addition, Han asserted his initial counsel was ineffective for failing to properly explain the offense and the consequences he faced as a result of his guilty plea, and for failing to file a motion to withdraw guilty plea. Han also claimed the State misrepresented the terms of the guilty plea agreement at a post-plea hearing by implying Han's positive drug test violated the agreement.

The record before this court demonstrates Han's initial counsel did not file a motion to withdraw guilty plea, but during a hearing the district court permitted Han to file a pro se motion to withdraw guilty plea and then appointed substitute counsel to represent Han for the proceedings regarding that motion. At that hearing, the State noted that Han sought to withdraw his plea following a positive drug test and argued he was attempting to avoid the consequences stemming from the positive test. Han's substitute counsel supplemented the motion to withdraw guilty plea and the district court permitted argument regarding the motion at a subsequent hearing. At the hearing, Han requested the district court to conduct an evidentiary hearing, arguing an evidentiary hearing would provide an explanation as to what counsel explained to Han regarding the plea agreement and clarify that Han wished to withdraw his guilty plea even before he had a positive drug test. The State then argued its position that withdrawal of the plea was not warranted, and also explained to the district court that the guilty plea agreement did not contain a stay-out-of-

trouble clause for Han's time on house arrest and a positive drug test did not violate the plea agreement.¹

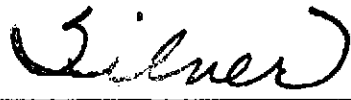
The district court then stated it had reviewed Han's motion and the record stemming from entry of Han's guilty plea. The district court concluded the record of the plea canvass demonstrated Han admitted he was guilty of the crime, understood the elements of the offense, and the consequences he faced as a result of his guilty plea. The district court further found Han acknowledged his attorney had answered all of his questions related to the guilty plea agreement to his satisfaction. The district court also noted Han asserted he entered the guilty plea agreement voluntarily. Finally, the district court found Han's positive drug test did not violate the terms of the guilty plea agreement because the agreement did not contain a general stay-out-of-trouble clause and Han could receive the agreed-upon sentence. The district court concluded the totality of the circumstances did not demonstrate a fair and just reason to permit Han to withdraw his plea and denied the motion.

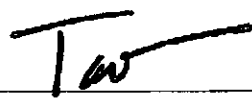
The record before this court supports the district court's conclusion and we conclude Han has not demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea without conducting an evidentiary hearing. *See Hubbard v. State*, 110 Nev.

¹Han argues the district court erred by permitting the State to make unfounded arguments at the hearing regarding his motion to withdraw guilty plea. We conclude Han is not entitled to relief for this issue because the State's arguments regarding the motion were reasonably based upon the facts contained within the record. *See generally Truesdell v. State*, 129 Nev. 194, 203, 304 P.3d 396, 402 (2013).

671, 675, 877 P.2d 519, 521 (1994). Therefore, Han 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. Douglas Smith, District Judge
Law Offices of Andrea L. Luem
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk