

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEVON ANTHONY GILLESPIE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74439

FILED

AUG 14 2018

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

LEVON ANTHONY GILLESPIE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74441

*ORDER OF AFFIRMANCE*

Levon Anthony Gillespie appeals from a judgment of conviction, entered pursuant to an *Alford*<sup>1</sup> plea, of attempted unlawful possession of an electronic stun device. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Gillespie argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Gillespie claims his plea was not knowingly and voluntarily entered because counsel did not discuss potential defenses with him and he was not given access to the evidence collected in this case.

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.

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

598, 604, 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.* at 603, 354 P.3d at 1281.

The district court found Gillespie’s claim was belied by the record because he acknowledged in the guilty plea agreement he had discussed his case and possible defenses with counsel. He also acknowledged during the guilty plea canvass he had discussed his case with counsel and had read and understood the guilty plea agreement. We conclude substantial evidence supports the decision of the district court. Further, we note Gillespie filed his motion to withdraw six months after he entered his guilty plea and only after he failed to appear for sentencing and the State regained the right to argue for any lawful sentence. Thus, much like in *Stevenson*, this weighs against Gillespie’s claim he was seeking to withdraw his plea for a fair and just reason. *See id.* Therefore, we conclude the district court did not abuse its discretion by denying the presentence motion without first holding an evidentiary hearing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Kerry Louise Earley, District Judge  
Law Offices of John P. Parris  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk