

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY CHARLES STURGES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74784-COA

**FILED**

MAR 14 2019

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

*ORDER OF AFFIRMANCE*

Larry Charles Sturges appeals from a judgment of conviction entered pursuant to an *Alford*<sup>1</sup> plea of attempted lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Sturges argues the district court erred by denying his presentence motion to withdraw 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. 598, 604, 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.* at 603, 354 P.3d at 1281.

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


In his motion, Sturges argued he should be permitted to withdraw his plea because it was not knowingly and voluntarily entered. Sturges asserted he did not understand the terms of the plea agreement because he did not read the written plea agreement, his counsel did not review the plea agreement with him, and he has memory and comprehension difficulties due to his age and mental health issues. In addition, Sturges asserted he was pressured to accept a plea offer rather than go to trial because his counsel did not conduct an investigation of the facts.

The district court conducted an evidentiary hearing concerning Sturges' claims. Counsel testified his investigator interviewed witnesses and investigated Sturges' assertion that another person committed the crime, but did not find favorable evidence. Counsel also testified he reviewed the plea agreement with Sturges and Sturges accepted the plea offer because Sturges believed it was in his best interest. The district court found counsel's testimony to be credible. In addition, the district court found Sturges stated at the plea canvass that he had read the written plea agreement, he understood its terms and the rights he waived by entry of his plea, and he wished to accept the plea offer from the State. The district court found Sturges' testimony at the evidentiary hearing concerning these issues was not credible.

The district court found, based on the totality of the circumstances, Sturges failed to demonstrate a fair and just reason to withdraw his guilty plea, and denied the motion. The record before this court supports the district court's decision and we conclude Sturges 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). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District Court  
Gregory & Waldo, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk