

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EARL LEE MCMILLIAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74918-COA

**FILED**

MAR 20 2019

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

*ORDER OF AFFIRMANCE*

Earl Lee McMillian appeals from a judgment of conviction entered pursuant to a guilty plea of two counts of sexual assault with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

McMillian claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea because defense counsel coerced his plea, did not spend sufficient time preparing for trial, visited him only four times during the five-year period that preceded his trial, did not adequately explain the guilty plea agreement to him, failed to advise him of the amount of time he could receive as a result of the guilty plea, and expressed anger at his desire to proceed to trial.

The district court reviewed the pleadings, transcripts, arguments of counsel, and documents on file in this case and made the following findings. The parties were in the process of selecting a jury when McMillian was presented with the State's plea offer. McMillian was thoroughly canvased on his decision to accept the plea offer before the parties' written plea agreement was filed in open court. His demeanor did not suggest any hesitation, coercion, confusion, or incompetency. He fully

understood the nature of the charges against him and the consequences of his guilty plea. His claims that defense counsel did not spend enough time with him, did not advise him of the totality of the circumstances of his plea, and coerced him into signing the plea agreement are belied by the record. He did not identify any cause for an evidentiary hearing. And he did not allege any facts which, if known to be true, would constitute a fair and just reason for allowing him to withdraw his guilty plea.

The record demonstrates the district court applied the correct standard for resolving McMillian's presentence motion to withdraw his guilty plea, *see Stevenson v. State*, 131 Nev. 598, 603-04, 354 P.3d 1277, 1281 (2015), and we conclude the district court did not abuse its discretion by denying McMillian's motion, *see State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969) (The district court's ruling on a presentence motion to withdraw a guilty plea "is discretionary and will not be reversed unless there has been a clear abuse of that discretion."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

Tao

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

Gibbons

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

Bulla

cc: Hon. Kenneth C. Cory, District Judge  
Law Office of Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk