

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA NATHANIEL BANASIAK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74138-COA

FILED

MAR 20 2019

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

ORDER OF AFFIRMANCE

Joahua Nathaniel Banasiak appeals from a judgment of conviction entered pursuant to a guilty plea of robbery with the use of a deadly weapon and assault with a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.


Banasiak contends the district court abused its discretion when it denied his presentence motion to withdraw his 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.


In his motion, Banasiak argued he was coerced into entering a guilty plea because his trial was about to begin and his counsel advised him that he would be found guilty if he proceeded to trial. In addition, Banasiak asserted he has a low IQ and for that reason he did not understand he would be sentenced to prison rather than be placed on probation.


The district court reviewed the record and concluded Banasiak was not entitled to relief. In the written plea agreement, which Banasiak acknowledged having read, he asserted he entered his plea voluntarily and did not act under duress or coercion. At the plea canvass, Banasiak also stated he entered his plea freely and no threats had been made to induce him to enter a guilty plea. In addition, Banasiak acknowledged in the written plea agreement that he understood the possible range of punishments he faced and that he was not eligible for probation for his robbery-with-the-use-of-a-deadly-weapon offense.

The district court found, based on the totality of the circumstances, Banasiak failed to demonstrate a fair and just reason to withdraw his guilty plea. The record before this court supports the district court's decision and we conclude Banasiak 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: Hon. Michelle Leavitt, District Judge
Law Offices of Carl E.G. Arnold
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk