

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERNEST HARVEY GOODSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75168-COA

FILED

MAR 20 2019

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

ORDER OF AFFIRMANCE

Ernest Harvey Goodson appeals from a judgment of conviction, pursuant to a no-contest plea, of lewdness with a minor under 14 years of age. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Goodson first contends the district court abused its discretion by denying his request to withdraw his no-contest plea. A defendant may move to withdraw a guilty plea¹ 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). The district court must look beyond whether the plea was knowingly, voluntarily, and intelligently made, and “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.


¹No-contest pleas are the equivalent of guilty pleas and are treated the same. *State v. Lewis*, 124 Nev. 132, 133, n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 355 P.3d 791 (2015).


Goodson stated he wanted to withdraw his plea because he maintained his innocence and he only pleaded no contest because the district court granted the State's motion in limine to allow in prior bad act evidence. And Goodson now argues his plea was unknowing and unintelligent because he was not informed during his canvass that the district would not allow him to later withdraw his plea. A defendant's guilt or innocence is not generally at issue in a motion to withdraw a plea. *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). The district court informed Goodson that the prior bad act evidence could still be used against him were he to withdraw his plea and proceed to trial. And the district court had no duty to inform Goodson that he could not withdraw his plea at will. See *Stevenson*, 131 Nev. at 605, 354 P.3d at 1282 (cautioning against allowing "the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim" (internal quotation marks omitted)). We therefore conclude the district court did not abuse its discretion by denying Goodson's motion to withdraw his plea.


Goodson next contends the district court erred by denying his counsel's oral motion to replace appointed counsel. Goodson does not argue the factors set forth in *Young v. State*, 120 Nev. 963, 968-71, 102 P.3d 572, 576-78 (2004), for determining whether the district court abused its discretion by denying counsel's request. We therefore conclude Goodson has failed to demonstrate the district court abused its discretion by denying the motion. To the extent Goodson is arguing counsel was ineffective, such claims generally cannot be raised in a direct appeal. See *Rippo v. State*, 122 Nev. 1086, 1096, 146 P.3d 279, 286 (2006).

Finally, Goodson contends he is entitled to relief due to cumulative errors. Because Goodson has failed to demonstrate any error, there is nothing to cumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
JK Nelson Law LLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk