

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL JACOB SPEER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75259-COA

**FILED**

AUG 14 2019

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

*ORDER REVERSING, VACATING, AND REMANDING*

Paul Jacob Speer appeals from a judgment of conviction entered pursuant to a guilty plea of two counts of attempted sexual assault on a minor under sixteen years of age. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Speer claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea without conducting an evidentiary hearing.

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). Ineffective assistance of counsel could be a fair and just reason for withdrawing a guilty plea. *See id.* A defendant is entitled to an evidentiary hearing on a claim of ineffective assistance of counsel only if he asserts specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). “[A] claim is not belied by the record just because a factual dispute is created by the pleadings or affidavits filed during the . . . proceedings.” *Berry v. State*, 131

Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (internal quotation marks omitted). We review a district court's rulings on presentence motions to withdraw guilty pleas and decisions regarding evidentiary hearings for abuse of discretion. *Id.*; *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 384-85, 455 P.2d 923, 926 (1969).

In his motion to withdraw the guilty plea and his supplement to the motion, Speer argued he should be allowed to withdraw his guilty plea because defense counsel were ineffective for affirmatively misrepresenting the status of the negotiations in his California case, failing to explain the potential impeachment consequences his guilty plea might have on his California case, and inadvertently sending privileged attorney-client information to the State. Speer also argued he should be allowed to withdraw his guilty plea because he is actually innocent as evidenced by the results of two polygraph examinations.

The district court considered the arguments the parties presented in open court; the pleadings, exhibits, and record on file; and Speer's declaration. The district court made the following findings: Speer's assertions that he was promised benefits beyond those delineated in the guilty plea agreement and that he was coerced into pleading guilty are belied by the record. Speer's claim that defense counsel made affirmative misrepresentations did not warrant an evidentiary hearing because Speer did not allege in his declaration that counsel affirmatively misrepresented any issue of fact before he entered his guilty plea and he did not directly allege that he relied upon counsels' misrepresentations to his detriment. Speer's counsel were not required to explain all of the potential collateral consequences of his guilty plea, nor were they required to engage in negotiations regarding his California case. And Speer did not specify the

privileged information that counsel allegedly disclosed to the State, nor did he demonstrate that he was prejudiced by its alleged disclosure.

The district court determined from the totality of the circumstances that Speer entered his guilty plea knowingly, voluntarily, and intelligently; he did not provide a fair and just reason for withdrawing his guilty plea; and he failed to show that an evidentiary hearing was warranted. The district court did not make a specific finding regarding Speer's claim of actual innocence.

In his motion, and at a hearing before the district court, Speer specifically alleged several claims of ineffective assistance of counsel. Speer's declaration supported some of the allegations, and any omissions in the declaration did not render the averments in the motion and at the hearing "belied by the record." Further, Speer specifically alleged that, but for counsels' deficiencies, he would not have pleaded guilty and would have proceeded to trial. Because Speer's allegations met the threshold for an evidentiary hearing, *see Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225, we conclude the district court abused its discretion by denying Speer's motion without first conducting an evidentiary hearing. Therefore, we reverse the denial of the motion to withdraw the guilty plea, vacate the judgment of conviction, and remand to the district court to conduct an evidentiary hearing. If, after an evidentiary hearing, the district court determines Speer failed to demonstrate a fair and just reason for withdrawing his guilty plea, the district court may reinstate the judgment of conviction.

Having determined Speer is only entitled to the relief described above, we

ORDER the denial of the motion to withdraw the guilty plea REVERSED, VACATE the judgment of conviction, and REMAND this matter to the district court for proceedings consistent with this order.

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

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

TAO, J., concurring:

Speer makes two different types of allegations. I concur that a remand is warranted for the district court to explore whether any “fair and just” reason exists for Speer to withdraw his plea under *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). But I would not remand for further consideration of Speer’s allegations that his counsel was ineffective. As to those claims, Speer simultaneously alleges that counsel misinformed him that the plea negotiation included resolving this case as well as his California case, but that counsel also failed to inform him that entry of his plea in this case could be used to impeach him when he planned to testify at his future California trial. These allegations flatly contradict each other and both cannot be true, because if he planned to testify in his California case with the hope that this plea would not be used against him then he could not have also believed that this negotiation would terminate that California case. Further, both of these allegations are contradicted by his guilty plea canvass. Consequently, I would conclude that Speer’s ineffectiveness allegations are factually impossible and therefore that he

has not made allegations that, if true, would entitle him to relief, and no hearing on those claims is necessary.

Tao, J.  
Tao

cc: Hon. Kerry Louise Earley, District Judge  
Zaman Legal  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk