

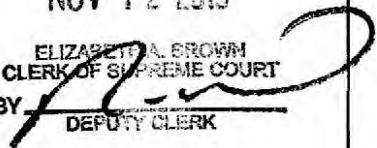
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES LIMPERIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77585-COA

FILED

NOV 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Limperis appeals from a judgment of conviction entered pursuant to a guilty plea of theft. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Limperis claims the district court abused its discretion by denying 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). 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.” *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

Limperis claimed he entered a guilty plea because “every attempt to retrieve information in all forms of missing information had been futile.” Immediately after entering his guilty plea he learned that forensic capabilities exist to retrieve data from old computers and cell phones. Searches of these devices have been completed and although the searches

did not retrieve all of the text messages, emails, photographs, and phone logs, Limperis asserted that the information they did recover proved that his accuser made false statements under oath to the grand jury and to the Attorney General Investigator. He also asserted the retrieved emails established the accuser "omitted work and the plan desired by the accuser underlying this businesses transaction." Additionally, he argued that he was not provided with a copy of the Attorney General's investigative report and, had he been, he would have been able to prove the claims it contained were wrong.

The district court considered Limperis' motion to withdraw his guilty plea, the State's opposition to that motion, and the arguments of counsel and made the following findings. Limperis' basis for seeking to withdraw his guilty plea did not amount to a substantial reason that is fair and just because Limperis failed to show that the evidence he claims caused him to change his mind about his guilty plea went to the defense of his case in a manner that was substantial, necessary, and "would have turned the outcome." The record supports the district court's findings and demonstrates the district court applied the correct standard for resolving Limperis' motion. Accordingly, we conclude the district court did not abuse its discretion by denying Limperis' presentence motion to withdraw his guilty plea.

Limperis also claims the district court abused its discretion by rejecting his request for an evidentiary hearing. Limperis stated in his motion, "*To the extent necessary, Mr. Limperis respectfully requests an evidentiary hearing to further support his contentions.*" (Emphasis in original.) He did not argue for an evidentiary hearing during the district court's hearing on his motion, and he has not demonstrated that his claims

of new evidence would have entitled him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (2008) (holding a defendant was not entitled to an evidentiary hearing on a postconviction motion to withdraw a guilty plea where he failed to assert specific factual allegations that were not belied or repelled by the record and, if true, would have entitled him to relief). Therefore, we conclude the district court did not abuse its discretion by resolving his presentence motion to withdraw his guilty plea without an evidentiary hearing. *See Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (reviewing a district court's determination that a defendant is not entitled to an evidentiary hearing for abuse of discretion).

Having concluded Limperis is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
James J. Ruggeroli
Attorney General/Carson City
Clark County District Attorney
Attorney General/Ely
Eighth District Court Clerk