


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL LINDEN HARKER, A/K/A PAUL  
LYNDEN HARKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78556-COA

**FILED**

NOV 12 2019

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Paul Linden Harker appeals from a judgment of conviction entered pursuant to a guilty plea of possession of a controlled substance. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Harker claims the district court abused its discretion by basing its decision to deny his presentence motion to withdraw his guilty plea on his failure to appear at the evidentiary hearing the district court set for his motion.

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).

Harker claimed in his motion that he received additional discovery after he entered his guilty plea which demonstrated that no

fingerprints were obtained from the plastic baggy that contained methamphetamine residue. He asserted this new evidence changed his analysis of his probability of success at trial and therefore he would like to proceed to trial. The district court set the motion for an evidentiary hearing, but Harker failed to appear and consequently no evidence was presented to support his reasons for withdrawing his guilty plea.

The district court made the following findings. Harker's motion was not accompanied by an affidavit that supported its factual contentions as required by 7JDCR 7(7). Harker did not appear at the evidentiary hearing that the district court conducted pursuant to 7JDCR 7(11). "There is no evidence showing that the motion has merit and everything about this motion has to do with [Harker's] thought process. Counsel's representation, without more, is insufficient." And it would not be fair and just under the totality of the circumstances to permit Harker to withdraw his guilty plea.

The record supports the district court's findings and demonstrates the district court applied the correct standard for resolving Harker's motion. Accordingly, we conclude the district court did not abuse its discretion by denying Harker's presentence motion to withdraw his guilty plea.

Harker also claims the district court abused its discretion at sentencing by failing to consider the poor health of his father, his own health and remorse, and the fact that the evidence of his crime consisted only of methamphetamine residue that could not be weighed. He further asserts the district court should have placed him on probation if it was not going to grant his motion to withdraw his guilty plea.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009).

We will not interfere with the sentence imposed by the district court “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The district court’s decision to grant probation is discretionary. NRS 176A.100(1)(b).

Here, Harker’s sentence of 19 to 48 months in prison falls within the parameters of the relevant statutes. *See* NRS 193.130(2)(e); NRS 453.336(2)(a). Harker does not allege the district court relied on impalpable or highly suspect evidence. And the record demonstrates the district court considered counsels’ arguments and Harker’s allocution. We conclude Harker has not demonstrated that the district court abused its discretion at sentencing.

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

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

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

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

cc: Hon. Gary Fairman, District Judge  
Kirsty E. Pickering Attorney at Law  
Attorney General/Carson City  
White Pine County District Attorney  
White Pine County Clerk