

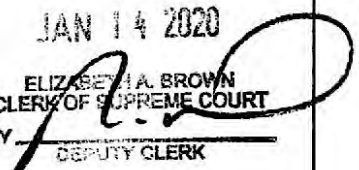
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ANVER CABELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76600-COA

FILED

JAN 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Anver Cabell appeals from a judgment of conviction entered pursuant to a guilty plea of burglary. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

First, Cabell argues the district court erred 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). 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.*

In the written plea agreement, Cabell and the State agreed to stipulate to a sentence of 6 to 15 years under the small habitual criminal enhancement. At the plea canvass, Cabell acknowledged that he understood that both parties stipulated to a sentence of 6 to 15 years under the small habitual criminal enhancement. However, Cabell later filed a motion to withdraw his guilty plea in which he asserted his counsel was

ineffective for failing to provide him with timely notice of the State's intent to seek punishment as a habitual criminal.


The district court conducted an evidentiary hearing concerning Cabell's motion to withdraw his guilty plea and counsel testified regarding her discussions with Cabell about the State's notice of intent to seek the habitual criminal enhancement. Counsel testified that they discussed the State's notice of its intent to seek the enhancement under the large habitual criminal statute beginning approximately six months prior to entry of Cabell's guilty plea and discussed the habitual criminal enhancement multiple times prior to entry of Cabell's guilty plea. Counsel further testified that the State ultimately offered a plea agreement where the parties would stipulate to a sentence under the small habitual criminal enhancement, she discussed the terms of the proposed agreement with Cabell, and Cabell decided to accept the agreement. The district court concluded counsel's testimony was credible. The district court concluded the totality of the circumstances did not demonstrate a fair and just reason to permit Cabell to withdraw his guilty plea. At a subsequent hearing, the district court followed the parties' sentencing stipulation and ordered Cabell to serve a term of 6 to 15 years in prison under the small habitual criminal enhancement.

On appeal, Cabell argues the district court erred by finding he did not demonstrate a fair and just reason to permit him to withdraw his guilty plea. We conclude Cabell 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) (reviewing the district court's denial of a motion to withdraw guilty plea for an abuse of discretion).

Second, Cabell argues the district court erred by granting the State's motion to admit prior bad acts. The entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the plea. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975); *see also Tollett v. Henderson*, 411 U.S. 258, 267 (1973). There is no indication in the record that Cabell preserved the right to raise this claim in an appeal. *See* NRS 174.035(3). We therefore decline to consider this claim.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Hill Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk