

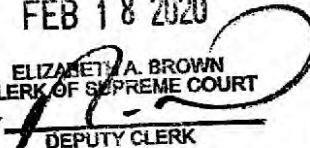
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ABEL ZAMORA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77602-COA

FILED

FEB 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Abel Zamora appeals from a judgment of conviction entered pursuant to a guilty plea of battery constituting domestic violence with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

First, Zamora argues the district court erred by denying his presentence motion to withdraw his guilty plea. Zamora also contends the district court improperly utilized a heightened standard when reviewing his motion as it required him to demonstrate a substantial fair and just reason for withdrawing his plea, rather than simply any reason that is fair and just.

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.* at 603, 354 P.3d at 1281.

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In his motion, Zamora claimed he should be permitted to withdraw his guilty plea because his counsel coerced him into entering a guilty plea. Zamora also contended he entered his plea without first having the opportunity to view discovery.


The district court conducted an evidentiary hearing and both Zamora and his counsel testified at that hearing. Counsel testified he did not coerce or threaten Zamora into pleading guilty. Rather, counsel testified that he candidly informed Zamora that a jury would not view him favorably if Zamora were to proceed to a trial. Counsel also testified he met with Zamora at the jail prior to entry of his guilty plea and reviewed the discovery with him during that meeting. The district court reviewed a transcript of the plea canvass and found Zamora acknowledged that no one forced him to enter a guilty plea. The district court found the testimony presented at the evidentiary hearing demonstrated Zamora was not coerced into entering a guilty plea and he had the opportunity to review the discovery prior to entry of his plea. The district court also found Zamora's testimony demonstrated he had knowingly and voluntarily entered a guilty plea, but developed remorse for doing so at some later point.

The district court specifically stated it analyzed Zamora's claims based upon the test identified in *Stevenson*, and we conclude Zamora fails to demonstrate the district court applied an improper test for analyzing claims raised in a motion to withdraw a guilty plea. The district court found, based on the totality of the circumstances, Zamora did not demonstrate a fair and just reason to permit withdrawal of his guilty plea. After review of the record, we conclude Zamora 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). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Coyer Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk