

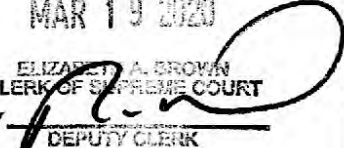
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARGARET GENEVIEVE SCHMITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77686-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Margaret Genevieve Schmitt appeals from a judgment of conviction entered pursuant to a no-contest plea to possession of a controlled substance for the purpose of sale. First Judicial District Court, Carson City; James Todd Russell, Judge.

Schmitt first contends the district court erred by denying her motion to withdraw her no-contest plea. A defendant may move to withdraw a plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw [her] 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). We give deference to the findings of the district court so long as they are supported by the record. *Id.*

In her motion, Schmitt claimed her plea should be withdrawn because counsel coerced her plea and she was factually innocent. The district court held an evidentiary hearing on Schmitt’s motion to withdraw. The district court found, under the totality of the circumstances, there was

no fair or just reason to allow Schmitt to withdraw her plea.<sup>1</sup> The district court found no evidence of coercion. The district further found that Schmitt's claims of innocence were not credible. We conclude the district court's findings are supported by the record, the district court applied the correct standard when resolving the motion, and the district court did not abuse its discretion by denying this claim. *See id.* at 605, 354 P.3d at 1282 ("Permitting [the defendant] to withdraw [her] plea under the circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim." (internal quotation marks omitted)).

Schmitt next contends the district court "failed to protect [her] from counsel's conflict of interest."<sup>2</sup> "[A] conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir. 1991)).

Schmitt claimed counsel suffered from a conflict because he previously represented Schmitt's codefendant. Counsel notified the district court that he had represented Schmitt's codefendant for a short amount of time six years prior to the crimes in the instant case. Counsel further explained that he was replaced by retained counsel not long into that case, he did not recall much about the case, he did not receive any

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<sup>1</sup>A no-contest plea is treated the same as a guilty plea. *See State v. Smith*, 131 Nev. 628, 630, 356 P.3d 1092, 1094 (2015).


<sup>2</sup>Schmitt was initially represented by the Nevada State Public Defender. When Schmitt indicated she wished to withdraw her plea, that office withdrew due to a conflict of interest. This claim is in regard to conflict counsel.

communications from the codefendant that would affect Schmitt's case, and he had not read or heard anything that would create a conflict in Schmitt's case. Under these facts, Schmitt has not demonstrated counsel was placed in a situation conducive to divided loyalties. Because Schmitt did not demonstrate counsel suffered from a conflict of interest, we conclude she failed to demonstrate the district court had a duty to replace counsel.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. James Todd Russell, District Judge  
John E. Malone  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk

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<sup>3</sup>Because we affirm Schmitt's judgment of conviction, we deny her motion for stay of execution of sentence as moot.