

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARMANDO DELAROSA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78803-COA

FILED

MAY 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yoerger
DEPUTY CLERK

ORDER OF AFFIRMANCE

Armando Delarosa, Jr., appeals from a judgment of conviction entered pursuant to a guilty plea of two counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Delarosa argues the district court erred by denying his presentence motion to withdraw his guilty plea. In his motion, Delarosa claimed his plea was not entered knowingly, voluntarily, and intelligently because his counsel failed to properly investigate this matter or interview witnesses, and failed to file pretrial motions. Delarosa also contended his counsel's failures caused him to be coerced into entering a 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.* at 603, 354 P.3d at 1281. We review the district court's

denial of a motion to withdraw a guilty plea for an abuse of discretion. See *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

The district court conducted an evidentiary hearing and Delarosa's counsel testified. Counsel testified concerning his investigation and stated his investigator interviewed the victim and the victim's mother. Counsel testified he utilized his investigator to interview the victim's mother because she was not cooperative with him. Counsel stated he reviewed a possible witness but found his potential testimony would have been irrelevant and concluded character witnesses may have led to introduction of unfavorable information at trial. Counsel also stated he considered filing pretrial motions, but ultimately decided any such motions would have been futile. The district court found counsel's actions were reasonable under the circumstances in this case. See *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (to establish a claim of ineffective assistance of counsel a defendant must show that counsel's performance fell below an objective standard of reasonableness and resulting prejudice). Substantial evidence supports the district court's finding. See *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."). In addition, Delarosa acknowledged in the written plea agreement that he did not enter his guilty plea under duress or coercion.

After the evidentiary hearing, the district court found Delarosa entered his guilty plea knowingly, voluntarily, and intelligently. The district court found, based on the totality of the circumstances, Delarosa did not demonstrate a fair and just reason to permit withdrawal of his guilty plea. We conclude Delarosa has not demonstrated the district court abused its discretion by denying the motion to withdraw his guilty plea.

Second, Delarosa argues the district court abused its discretion when imposing sentence because it relied upon inaccurate information concerning a prior California conviction. Delarosa contends a 2001 California judgment of conviction did not accurately reflect the charges to which he pleaded guilty.

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).

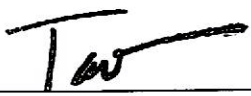
At the sentencing hearing, Delarosa provided the district court with a copy of the complaint from which the conviction stemmed showing the charges differed from what was reflected in the judgment conviction. Delarosa also noted the district court had previously rejected his argument that the 2001 California judgment of conviction did not accurately reflect which offenses he had been convicted of committing. The district court reiterated its prior decision to deny Delarosa's claim concerning the accuracy of the judgment of conviction. The district court subsequently heard the arguments of the parties and imposed concurrent terms of life in prison with the possibility of parole in ten years. The district court made no reference to the 2001 California judgment of conviction when imposing sentence.

The sentence imposed in this case is within the parameters provided by the relevant statute, *see* NRS 201.230(2), and we conclude Delarosa failed to demonstrate the district court relied upon impalpable or

highly suspect evidence when it imposed sentence. To the extent Delarosa also argues the district court should have amended the presentence investigation report in light of the alleged error in the 2001 California judgment of conviction, we conclude he failed to demonstrate the district court abused its discretion in this regard. *See Sasser v. State*, 130 Nev. 387, 393, 324 P.3d 1221, 1225 (2014) (stating the district court had the discretion to decide whether any of the information contained with the presentence investigation report was based on impalpable or highly suspect evidence and thus should be stricken from the report). Therefore, we conclude Delarosa is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Law Offices of Andrea L. Luem
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk