

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACQUES ANTON LANIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79133-COA

FILED

JUN 09 2020

EMILY A. CROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jacques Anton Lanier appeals from a judgment of conviction, pursuant to an *Alford*<sup>1</sup> plea, of lewdness with a child under 16 years of age. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Lanier contends 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). We give deference to the findings of the district court so long as they are supported by the record. *Stevenson*, 131 Nev. at 604, 354 P.3d at 1281.

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970). An *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 355 P.3d 791 (2015).

Lanier argues he received ineffective assistance from trial-level counsel that prevented his guilty plea from being freely and voluntarily entered. Ineffective assistance of counsel could constitute a fair and just reason for withdrawing a guilty plea. *Cf id.* (considering whether allegations that standby counsel's "lies" provided a fair and just reason to withdraw a guilty plea). To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a defendant must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability defendant would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 697 (1984), and the defendant must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Lanier argues his former counsel were ineffective for allowing a more favorable plea offer to expire without first discussing it with Lanier. The week before the start of Lanier's scheduled jury trial, the State extended an offer to allow Lanier to plead guilty to luring a child. The offer expired without Lanier accepting it, and on the first day of trial, Lanier accepted a new offer to plea to the lewdness charge. At the evidentiary hearing the district court conducted on Lanier's motion to withdraw his plea, one of Lanier's former attorneys testified that he discussed the luring plea offer with Lanier before it expired but Lanier did not agree to it.

Because the district court found that Lanier's testimony was not credible and former counsel's testimony was otherwise unrebutted, Lanier failed to demonstrate the facts underlying his claim by a preponderance of the evidence. He thus failed to demonstrate counsel's actions were objectively unreasonable.

Second, Lanier argues his former counsel were ineffective for not objecting to the State's late disclosure of evidence and not allowing Lanier an opportunity to view the evidence. At a hearing the week before Lanier's trial was scheduled to start, his former counsel stated that they had recently obtained new information from the State. While the State's initial disclosure of evidence generally must be made not less than 30 days before trial, *see* NRS 174.285(2), any evidence discovered thereafter simply must be "promptly" disclosed, *see* NRS 174.295(1). Lanier did not demonstrate when the State discovered the additional evidence and, thus, that it was not timely disclosed. Further, one of Lanier's former attorneys testified at the evidentiary hearing in this matter that he had given Lanier the new evidence and asked him to direct counsel's attention to the relevant portions. Because Lanier failed to support his underlying facts by a preponderance of the evidence, he failed to demonstrate that counsel were deficient.

Finally, Lanier argues that the cumulative effect of counsel's errors resulted in an invalid guilty plea. Lanier has not demonstrated any error, and accordingly, there is nothing to cumulate.


For the foregoing reasons, we conclude Lanier has not demonstrated that the district court abused its discretion by finding, under

the totality of the circumstances, Lanier did not demonstrate a fair and just reason for withdrawing his plea and denying Lanier's motion. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. David M. Jones, District Judge  
Law Offices of Andrea L. Luem  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk