

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY DESMOND SIMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81364-COA

FILED

NOV 20 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Desmond Simon appeals from a judgment of conviction entered pursuant to an *Alford*¹ plea of indecent exposure in the presence of a child or a vulnerable person. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Simon claims the district court abused its discretion 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). The district court’s ruling on a presentence motion to withdraw a guilty plea “is discretionary and will not be reversed unless there has been a clear abuse of that discretion.” *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

Simon claimed he was entitled to withdraw his guilty plea because he did not understand the consequences of his guilty plea and

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

defense counsel was ineffective. He specifically argued that counsel failed to adequately investigate the facts of the case, fully advise him of the sex offender registration requirements, and request a psychiatric evaluation of the victim.

The district court conducted an evidentiary hearing and made the following findings. Simon's claim regarding his lack of understanding of an *Alford* plea was not credible. Simon's claim regarding his lack of understanding of the sex offender registration requirements was belied by the record. Counsel's testimony regarding her standard practices and recollections of representing Simon were credible. Counsel explained to Simon what an *Alford* plea entails, the sex offender registration requirements, and the evidence against him. Counsel's investigation prior to the preliminary hearing and the plea negotiation was reasonable. And, based on the totality of the circumstances, Simon failed to present a fair and just reason for withdrawing his guilty plea.

The record supports the district court's findings and demonstrates the district court applied the correct standard for resolving Simon's motion. Therefore, we conclude the district court did not abuse its discretion by denying Simon's presentence motion to withdraw his guilty plea.


Simon also claims the district court abused its discretion at sentencing by sending him to prison instead of placing him on probation. He argues his offense was more than ten years old, his criminal record was "minimal," the psychosexual evaluation assessed his risk to reoffend as low to moderate, he had been a sexual abuse victim when he was a child, and he had served time in presentence confinement for this offense and confinement for a parole revocation in another case.

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). The district court is not required to follow the sentencing recommendations of the Division of Parole and Probation, *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972), and its decision to grant probation is discretionary, NRS 176A.100(1)(c).

Simon's 12- to 48-month sentence falls within the parameters of the relevant statutes. See NRS 193.130(2)(d); NRS 201.220(1)(b). Simon does not allege the district court relied on impalpable or highly suspect evidence. And the record demonstrates the district court considered Simon's previous parole and probation revocations and his moderate risk to reoffend, and it determined probation was not appropriate. We conclude from this record that the district court did not abuse its discretion at sentencing.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk