

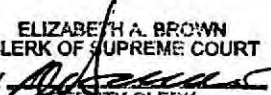
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON H. BAKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80938-COA

FILED

MAR 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jason H. Baker appeals from a judgment of conviction, entered pursuant to a guilty plea, of burglary and attempted murder with use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Baker contends the district court erred in 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). 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 decision on a motion to withdraw a guilty plea for an abuse of discretion. *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

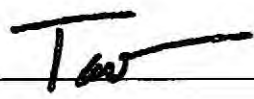
In his motion, Baker argued he had fair and just reasons to withdraw from his plea. First, he claimed previous counsel did not conduct

an in person meeting with him until two days prior to trial. Second, previous counsel erroneously advised Baker that a conviction of the charge of escape from electronic supervision could render him eligible for adjudication as a habitual criminal.

The district court conducted an evidentiary hearing on this motion. Baker's previous counsel testified he met with Baker numerous times before court appearances and also spoke to him over the phone multiple times. Moreover, Baker's previous counsel testified that his investigator met with Baker in person multiple times prior to trial. Finally, Baker's previous counsel testified he never told Baker that a conviction solely for escape from electronic supervision could result in adjudication as a habitual criminal. At the conclusion of the evidentiary hearing, the district court concluded, based on the totality of the circumstances, that Baker did not have a fair and just reason to withdraw his guilty plea. After a review of the record, we conclude Baker has not demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Flahive & Associates, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk