

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CAROLINE LOUISE BROWN, A/K/A
CAROLINE LOUISE STEIN, A/K/A
CAROLINE LOUISE DELLINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80815-COA

FILED

MAY 07 2021

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

ORDER OF AFFIRMANCE

Caroline Louise Brown appeals from a judgment of conviction, entered pursuant to a guilty plea, of three counts of obtaining money by false pretenses. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Brown argues the district court erred by denying her presentence motion to withdraw her 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. *Id.* at 603, 354 P.3d at 1281. 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). 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.

Brown argued that counsel's failure to investigate her innocence constituted a fair and just reason to withdraw her plea. Ineffective assistance of counsel could constitute a fair and just reason for withdrawing a guilty plea. *See id.* 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).

Brown did not specify what additional information counsel would have uncovered or how it would have affected her decision to plead guilty. We note that it appears most, and perhaps even all, of the many documents Brown submitted in support of her motion to withdraw her guilty plea had been provided to counsel while Brown's case was still pending in the justice court. Therefore, we conclude Brown has failed to demonstrate that the district court abused its discretion by denying her motion to withdraw her guilty plea on this ground. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not

conduct an adequate investigation must show how a better investigation would have made a more favorable outcome probable).

Brown next argued that she is innocent because evidence provided to the district court subsequent to the entry of her plea negated the “knowingly” element of her offenses. A credible claim of factual innocence could be a fair and just reason to grant a motion to withdraw a guilty plea. *See Mitchell v. State*, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993) (concluding the district court abused its discretion by denying appellant’s presentence motion to withdraw her guilty plea “in light of appellant’s credible claim of factual innocence and the lack of prejudice to the state”). Each of Brown’s three charges alleged she “knowingly execut[ed] a forged Performance and Payment Bond.” The State alleged that she altered three unauthorized performance and payment bonds using the surety company’s paper and bond numbers previously issued for unrelated projects, and she demonstrated her intent to defraud by submitting documents with the signature of a deceased employee and using the notary stamps of a former employee.

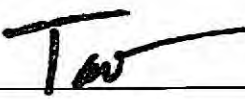
First, Brown claimed that she did not know her license had not been renewed; even if she was unlicensed, she had apparent authority to act; and the supposedly exhaustive log of powers of attorney that the State claimed demonstrated the powers of attorney were forged were in fact grossly incomplete. These claims did not demonstrate that Brown did not knowingly execute forged bonds. Second, Brown claimed the bonds at issue had actually been approved. Brown did not demonstrate that the bonds to which she pleaded guilty to forging were approved. Therefore, we cannot

conclude the district court abused its discretion by denying Brown's motion to withdraw her guilty plea based on her claims of innocence.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Attorney General/Ely
Attorney General/Las Vegas
Eighth District Court Clerk

¹Having concluded that Brown is not entitled to relief, we need not reach the issue of whether the State suffered prejudice.