

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYN ERIK HUBBENETTE-BRIDGES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82442-COA

FILED

DEC 23 2021

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

ORDER OF AFFIRMANCE

Bryn Erik Hubbenette-Bridges appeals from a judgment of conviction, pursuant to a guilty plea, of murder of the first degree. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

While in custody on another case, Hubbenette¹ confessed to killing Duyet Tran. After his confession, the State charged Hubbenette with Open Murder with the Use of a Deadly Weapon and the Washoe County Public Defender's Office was appointed to represent him. The public defender's office provided Hubbenette with two attorneys. Over approximately fifteen meetings, Hubbenette and his attorneys discussed the case and plea negotiations.

Hubbenette and his attorneys discussed the differences between first- and second-degree murder, including the definition of premeditation. They also talked of mitigation and potential defenses; Hubbenette told his attorneys of his struggles with mental illness and that the victim was the initial aggressor, although the extent to which these conversations occurred is not clear from the record. Eventually, these conversations led

¹Hubbenette-Bridges indicated to the district court that he normally goes by one last name, "Hubbenette," and we respect that preference here.

Hubbenette's attorneys to extend a second-degree murder plea offer to the State. The State rejected this offer.

Shortly thereafter, in January 2020, Hubbenette agreed to plead guilty to first-degree murder on the condition that the State would not pursue the deadly weapon enhancement and would dismiss an unrelated pending case. Further, the district court would sentence him to 50 years of incarceration with parole eligibility after 20 years. While the district court was free to deviate from that sentence, Hubbenette was entitled to withdraw his plea if the district court did so. His sentencing was scheduled for early 2020, but the COVID-19 pandemic and Hubbenette's preference for an in-person sentencing hearing delayed sentencing until September.

In September 2020, before sentencing, Hubbenette and his attorneys received mitigation discovery. The mitigation documents spanned approximately 1,600 pages, detailing Hubbenette's youth, his time in the California foster care system, and his past as a victim of abuse. Seeing these newly acquired documents, Hubbenette felt as though his attorneys failed to complete their investigation before he pleaded guilty. Accordingly, Hubbenette informed his attorneys that he wanted to withdraw his guilty plea and they filed the motion.

Hubbenette's motion to withdraw his guilty plea was based on his belief that his attorneys failed to conduct a complete investigation before advising him to plead guilty to first-degree murder and that his attorneys failed to explain the elements of first-degree murder. Because his attorneys were the target of his challenge, Hubbenette moved for the appointment of conflict counsel. After a hearing, the district court agreed and appointed conflict counsel.

At a hearing on Hubbenette's withdrawal motion, the district court heard extensive testimony from Hubbenette on direct examination, as

he explained his decision to attempt to withdraw his guilty plea. Hubbenette offered testimony that he never fully understood the State's charges, the definitions of the elements of first-degree murder, or which defenses were available to him, all because his attorneys were allegedly deficient.

On cross-examination, the State elicited inconsistent testimony from Hubbenette. Notably, Hubbenette agreed that he and his attorneys had discussed the differences between first- and second-degree murder, including the definition of premeditation. Hubbenette even relayed a competent understanding of the legal concept of premeditation to the district court. Hubbenette also testified that he had made passing references to his attorneys about his struggles with mental health and drug use. Ultimately, when asked whether the new mitigation documents contained new information, Hubbenette admitted, "pretty much not." After Hubbenette's testimony, the district court took the plea withdrawal motion under advisement.

After reviewing the evidence, the testimony from the hearing on the motion, the plea canvass, and other portions of the record, the district court denied Hubbenette's motion to withdraw his guilty plea. The district court then followed the sentencing recommendation set forth in the plea agreement and sentenced Hubbenette to 50 years with parole eligibility after 20 years. Hubbenette now appeals, arguing the district court's conclusion to deny his withdrawal motion was not supported by the record.

Hubbenette argues that the mitigation documents he received after entering his plea represent a "fair and just" basis for the withdrawal of his plea. The State disagrees, pointing to Hubbenette's informed statements of understanding at both the plea canvass and before the district court on his motion to withdraw. We agree with the State.

A party may file a motion to withdraw his guilty plea. NRS 176.165. So long as that motion comes before sentencing, district courts possess broad discretion in addressing those motions. *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). The district court must review the totality of the circumstances bearing on the motion, *Mitchell v. State*, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993), and “we give deference to [factual] findings so long as they are supported by the record,” *Stevenson*, 131 Nev. at 604, 354 P.3d at 1281. Thus, one question is whether the district court erred by “review[ing] the plea canvass in a vacuum.” *Mitchell*, 109 Nev. at 140-41, 848 P.2d at 1061-62. Another question is whether the district court reached conclusions not supported by the record. Hubbenette does not challenge the scope of the district court’s review, so we address his challenge to the support of the district court’s conclusion.

In a pre-sentencing motion to withdraw a guilty plea, the defendant is entitled to withdraw his plea if he has established a “fair and just” reason for the change. *Stevenson*, 131 Nev. at 603, 354 P.3d at 1281. District courts should consider the time between the guilty plea and its attempted withdrawal, evidence that the decision was made impulsively, or whether any factor could have coerced the original plea. *Id.* at 604, 354 P.3d at 1281-82. Ultimately, the act of pleading guilty is a “solemn” act and cannot be “revers[ed] at the defendant’s whim.” *Id.* at 605, 354 P.3d at 1282.

Here, Hubbenette alleges he changed his mind because he received the mitigation documents after he entered his plea. However, as the State highlighted before the district court and in its briefing, Hubbenette has not yet identified any information in those documents that changes his circumstances or his legal defenses. Indeed, when asked whether the new documents did or did not convey new information, Hubbenette responded, “pretty much not.” Hubbenette’s justification overlooks the utility of plea

bargaining. The defendant receives a less severe charge or sentence, both of which occurred here, in exchange for taking responsibility, thereby guaranteeing the State a conviction and saving time and resources. Functionally, many defendants who plead guilty will know more about mitigation, and focus on it, after pleading guilty but before sentencing. Therefore, Hubbenette's failure to connect the mitigation information with any new legal theory that would exculpate him indicates his change of heart is more of a whim or "buyer's remorse" than a "fair and just" reason to withdraw his solemn plea, as the district court noted.

Hubbenette also expressed a competent understanding of premeditation when he defined that term for the district court. Moreover, he conceded that his decision to plead guilty to first-degree murder was a strategic one, acknowledging that he would likely be convicted if tried for first-degree murder, given the applicable definitions. On these facts, we conclude that the record supports the district court's determination that Hubbenette failed to offer a "fair and just" reason for the withdrawal of his plea.

Finally, we acknowledge Hubbenette's vague references to ineffective assistance of counsel. However, to the extent his brief raises an ineffective assistance of counsel challenge, we decline to directly address it. First, the Nevada Supreme Court recently touched on ineffective assistance of counsel in plea withdrawal motions, holding the ineffectiveness of counsel may be considered as a part of the "fair and just" analysis. *See Sunseri v. State*, 137 Nev. Adv., Op. 58, 495 P.3d 127, 132 (2021). As noted above, Hubbenette's counsel explained the first-degree murder elements and attempted to secure a second-degree murder charge during plea negotiations, and ultimately did obtain a favorable plea agreement regarding the charge and sentencing. Therefore, we cannot conclude the

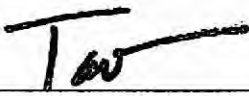
district court abused its discretion in as much as it found any ineffectiveness did not create a "fair and just" reason for withdrawal.²

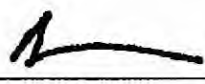
Second, substantive claims of ineffective assistance of counsel generally may only be raised through collateral postconviction habeas corpus proceedings and cannot be raised in a post-trial motion or on direct appeal from a judgment of conviction. See *Franklin v. State*, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994), *disapproved of on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Lastly, the record here is incomplete for us to decide this claim in the first instance. See *Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1021 (2006); *Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534-35 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1094, 1097 n.12 (2018).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²To the district court, Hubbenette argued his original public defenders inadequately explained the elements of first-degree murder and failed to complete a full investigation. Here, we distinguish that argument from a substantive ineffective assistance of counsel claim under *Strickland v. Washington*, 466 U.S. 668 (1984).