

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LON ALLEN CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83178-COA

FILED

JUN 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Lon Allen Clark appeals from a judgment of conviction, entered pursuant to a guilty plea, of battery with the use of a deadly weapon on an officer. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Clark argues the district court erred by denying his presentence motion to withdraw his guilty plea without first conducting an evidentiary hearing. 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). Courts should not focus exclusively on whether the plea was knowingly, voluntarily, and intelligently pleaded. *Id.* at 603, 354 P.3d at 1281. Nor should courts generally consider the guilt or innocence of the defendant. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). Ineffective assistance of counsel could be a fair and just reason for withdrawing a guilty plea. *Stevenson*, 131 Nev. at 604, 354 P.3d at 1281. A defendant is entitled to an evidentiary hearing if he asserts specific factual allegations that are not belied by the record and, if

true, would entitle him to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

In his motion, Clark argued he had a fair and just reason to withdraw his plea: He suffered from post-traumatic stress disorder (PTSD), feared police officers and firearms, and pleaded guilty to get out of jail. He claimed he was clearly of a confused mind when he pleaded guilty. He also claimed counsel was ineffective for failing to follow up on his claim that he suffered from PTSD.


The district court did not hold an evidentiary hearing regarding the claims raised in the motion. Rather, the district court stated that “it would not be appropriate in this instance[] to accept counsel’s proffer that Defendant was suffering a PTSD episode at face value.” The district court found Clark failed to support his claim with any evidentiary support that he suffered from PTSD or that he was having an issue with it during the guilty plea canvass. Finally, the district court concluded the timing of the motion weighed against granting the motion and the plea canvass was done properly.

The district court erred by not accepting Clark’s specific allegations at face value. *See Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) (providing that “[w]here . . . something more than a naked allegation has been asserted, it is error to resolve the apparent factual dispute without granting the accused an evidentiary hearing” (alterations in original) (quotation marks omitted)). An evidentiary hearing was necessary for Clark to present the required evidentiary support that he suffered from PTSD at the time he entered his plea. Further, while the district court did not err by considering the timing of the motion to withdraw and the propriety of the plea canvass, they are only factors to consider under

the totality of the circumstances test and do not necessarily provide a reason to deny the motion when Clark may have otherwise presented a fair and just reason to withdraw his plea. *See Stevenson*, 131 Nev. at 604-05, 354 P.3d at 1281-82. Accordingly, we conclude the district court abused its discretion by denying the motion without first conducting an evidentiary hearing. On remand, the district court should hold an evidentiary hearing and then determine whether Clark's alleged PTSD and ineffective-assistance-of-counsel claims constituted fair and just reasons to withdraw his plea. If the district court thereafter determines Clark's motion lacks merit, it may reinstate the judgment of conviction. Accordingly, we

ORDER the judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk