

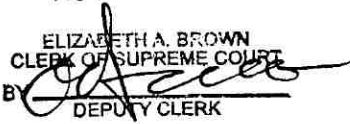
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTOINE BOUSLEY, A/K/A  
ANTWONE BOUSELY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84320-COA

FILED

NOV 08 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Antoine Bousley appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted sexual assault with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Bousley argues that 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). 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 give deference to the district court’s factual findings as long as they are supported by the record. *Id.* at 604, 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. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

In his motion, Bousley argued that he should be permitted to withdraw his plea because his counsel and an investigator coerced him into taking a plea deal he did not want. The district court conducted an evidentiary hearing on the motion, at which time counsel and Bousley testified. Counsel testified that he did not coerce Bousley into taking a plea deal and that Bousley gave him an offer to convey to the State, which the State accepted. Counsel testified that Bousley subsequently rejected the agreement and proposed a second offer that contemplated a reduction in bail so Bousley could "tie up his affairs before he did prison time," which the State also accepted.

Bousley indicated in the plea agreement and during the plea colloquy that he was satisfied with counsel's services and that he was not coerced into entering his plea. The district court concluded that Bousley was not pressured into entering his plea and that Bousley initiated the deal based on his desire to make bail. We conclude that substantial evidence supports the district court's decision.

At the hearing, Bousley also claimed that he should be permitted to withdraw his plea because he did not understand he would be going to prison. Bousley testified that he accepted a deal that contemplated an aggregate term of 5 to 12.5 years in prison so he could get out on bail and get his affairs in order. Moreover, Bousley indicated in the guilty plea agreement and during the plea colloquy that he understood he would be sentenced to a term of imprisonment and that counsel had reviewed the plea

agreement with him. Counsel also testified that he reviewed the plea agreement with Bousley and that Bousley sought a reduction in bail in anticipation of serving time in prison. The district court concluded that Bousley understood the terms and conditions of the guilty plea agreement. We conclude that substantial evidence supports the district court's decision.

We also note that Bousley filed his motion to withdraw his guilty plea approximately seven months after entry of the plea. "[O]ne of the goals of the fair and just analysis is to allow a hastily entered plea made with unsure heart and confused mind to be undone." *Stevenson*, 131 Nev. at 605, 354 P.3d at 1281-82 (internal quotation marks omitted). However, it is "not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty." *Id.* at 605, 354 P.3d at 1282 (quotation marks omitted). In light of the totality of the circumstances in this matter, Bousley failed to demonstrate a fair and just reason to permit withdrawal of his plea.

On appeal, Bousley argues that he should be permitted to withdraw his plea because counsel told him that he could withdraw his plea if he changed his mind. Bousley did not raise this claim below;<sup>1</sup> therefore,

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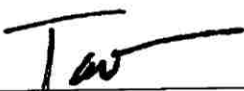
<sup>1</sup>Bousley did not raise this claim in his written motion. Moreover, although Bousley testified at the evidentiary hearing that counsel informed him that he could withdraw his plea, the district court neither construed this allegation as an independent claim for relief nor addressed the merits of the allegation.

we decline to consider this claim on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

For the foregoing reasons, we conclude that Bousley 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. Tara D. Clark Newberry, District Judge  
Monique A. McNeill  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk