


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES LEONARD WATERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85062-COA

FILED

MAY 08 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

James Leonard Waters appeals from a judgment of conviction entered pursuant to an *Alford*<sup>1</sup> plea of attempted sexual assault. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Waters argues the district court abused its discretion by denying his presentence motion to withdraw his 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). 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 if they are supported by the record. *Id.* at 604, 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

---

<sup>1</sup>See *North Carolina v. Alford*, 400 U.S. 25 (1970).


23-14379

of that discretion.” *State v. Second Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). To warrant an evidentiary hearing, a defendant must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Waters claimed he should be allowed to withdraw his plea because he maintained his innocence and the majority of his conversations with counsel centered around sentencing consequences. After considering the totality of the circumstances, the district court denied the motion because it found that Waters did not need to make an admission of guilt to enter a plea pursuant to *Alford* and it was undisputed that DNA evidence tying Waters to the commission of the offense had been recovered. The district court’s factual findings are supported by the record. And while Waters filed his motion approximately two weeks after the entry of his plea, Waters failed to demonstrate that his plea was entered impulsively or in a state of temporary confusion. *See Stevenson*, 131 Nev. at 605, 354 P.3d at 1281. Waters thus failed to demonstrate a fair and just reason to withdraw his plea. Therefore, we conclude that the district court did not abuse its discretion by denying Waters’ motion to withdraw his guilty plea without first conducting an evidentiary hearing, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Monica Trujillo, District Judge  
Mueller & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk