

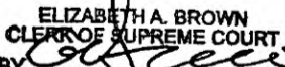
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN DUNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86094-COA

FILED

NOV 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Stephen Dunn appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Dunn argues 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). The Nevada Supreme Court rejected a test that gave “*exclusive* focus on the validity of the plea” and instead held that “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 (emphasis added). We review the district court’s decision on a motion to withdraw a guilty plea for an abuse of discretion. *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

First, Dunn argues that he had a fair and just reason to withdraw his plea because counsel failed to listen to him regarding his

assertions of innocence. However, he failed to allege specific facts to support his claim that counsel failed to listen to him or how he was innocent. Thus, we conclude that the district court did not abuse its discretion by denying this claim. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (requiring petitioners to “raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle [them] to relief”).¹


Second, Dunn argues the district court erred by applying the wrong standard when denying his motion. He argues the district court went beyond the fair and just standard by finding that Dunn failed to demonstrate the plea was not intelligently or voluntarily entered and that Dunn made no effort to withdraw his plea until the day of sentencing. Further, he argues the district court erred by not considering the totality of the circumstances when denying his motion.

Dunn fails to demonstrate that the district court applied the wrong standard. Dunn argued in his petition that counsel’s lack of communication caused his plea to not be knowingly and voluntarily entered because counsel did not explain his case, the elements of the crime, or his possible defenses. He also argued that these issues with counsel caused his plea to be coerced. The district court’s finding that Dunn entered his plea knowingly and voluntarily merely addressed the specific arguments that Dunn raised below. And the district court’s finding that Dunn waited four

¹Dunn alleges for the first time on appeal the facts that lead him to believe he is innocent. He also argues for the first time on appeal that he should be allowed to withdraw his plea because he is “actually innocent.” We decline to consider either his new factual allegations or new legal argument because he failed to raise them below. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

months after entering his plea before attempting to withdraw it and that the delay indicated this was a case of "buyer's remorse" are part of the totality of the circumstances that the district court may consider. See *Stevenson*, 121 Nev. at 605, 354 P.3d at 1282 (considering the totality of the circumstances and stating that we cannot "allow the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim" (internal quotation marks omitted)). Therefore, we conclude that Dunn fails to demonstrate that the district court went beyond the fair and just standard when it denied Dunn's motion to withdraw his guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Law Office of Timothy R. Treffinger
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk