

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALVESTER JOHN ASAIEAHEA
WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85901-COA

FILED

MAY 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alvester John Asaieahea Wilson appeals from a judgment of conviction, entered pursuant to a guilty plea, of second-degree murder with use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Wilson 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). 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 of . . . discretion.” *State v. Second Jud. Dist. Ct. (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

Wilson claimed that he had a fair and just reason to withdraw his plea because it was not entered knowingly, voluntarily, or intelligently. Wilson first alleged his plea was not knowing, voluntary, or intelligent because he was under the influence of illicit drugs at the time he entered his plea and was confused about the terms of the plea. Wilson argued that he was “extremely high” and not “in his right mind.” A guilty plea by a person under the influence of narcotics is not per se invalid. *Miller v. State*, 89 Nev. 561, 563, 517 P.2d 182, 182 (1973). Rather, “[t]he influence of narcotics must be such as to affect [their] competency to stand trial or [their] capacity to understand the nature and consequences of [their] plea.” *Id.* The burden is on the defendant to show that he was so influenced. *Cf. id.* at 563, 517 P.2d at 182-83.

Wilson’s bare claim failed to explain which plea terms he did not understand or how his lack of understanding affected the validity of his plea. Further, at the plea canvass, Wilson answered the questions of the district court appropriately and explained that he read and understood the guilty plea agreement, which was executed on the day he entered his plea. The plea agreement provided that Wilson was not under the influence of drugs that would impair his ability to understand the proceedings. Accordingly, Wilson failed to demonstrate that his alleged illicit drug use affected his ability to understand the nature and consequences of his plea.

Wilson also alleged his plea was not knowing, voluntary, or intelligent because the entry-of-plea court improperly failed to canvass him about whether he was intoxicated. The plea agreement included a provision stating Wilson was not under the influence of drugs that would impair his ability to understand the proceedings. And Wilson was canvassed regarding whether he read and understood the plea agreement. Accordingly, Wilson failed to demonstrate that the court's failure to specifically canvass him about his intoxication affected his ability to understand the nature and consequences of his plea.

Wilson also claimed he had a fair and just reason to withdraw his plea due to the ineffective assistance of trial-level counsel. Ineffective assistance of counsel could constitute a fair and just reason for withdrawing a guilty plea. *See Sunseri v. State*, 137 Nev. 562, 566, 495 P.3d 127, 132 (2021). To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Wilson had to raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle them to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Wilson claimed that counsel inaccurately communicated “critical facts” and appeared to argue that counsel coerced or pressured him to plead guilty. Wilson’s bare claims failed to explain what was inaccurately communicated, how counsel engaged in coercion, or how counsel’s actions affected his decision to plead guilty. Accordingly, Wilson failed to demonstrate counsel’s performance was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on proceeding to trial but for counsel’s alleged errors.

Wilson also appeared to claim that counsel misinformed him about the sentence he faced. Wilson’s bare claim failed to explain how he was misinformed or how counsel’s actions affected his decision to plead guilty. Accordingly, Wilson failed to demonstrate counsel’s performance was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on proceeding to trial but for counsel’s alleged error.

Wilson also argues on appeal that he had fair and just reasons to withdraw his plea because (1) counsel never “fully explained” the offer to him but told him that he must sign the plea or lose at trial and spend the rest of his life in prison, and (2) the entry-of-plea court improperly failed to canvass him about his “mental state.” These arguments were not raised below, and we decline to address them on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Finally, Wilson argues that he had a fair and just reason to withdraw his plea because he himself did not sign the guilty plea agreement. This claim was raised for the first time in his reply brief, and

we therefore decline to consider it. *See LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014). Nevertheless, it appears from the record that Wilson authorized counsel to sign the guilty plea agreement on Wilson's behalf.

After considering the totality of the circumstances, we conclude Wilson failed to demonstrate a fair and just reason to permit withdrawal of his plea. Therefore, we conclude Wilson has not demonstrated the district court abused its discretion by denying his motion to withdraw his plea, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
1 Stop Legal, PLLC.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk