

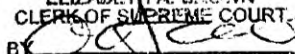
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VAELLI TALIAOA, A/K/A VAELLI
TALAOIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86294-COA

FILED

JUL 15 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Vaelli Taliaoa appeals from a judgment of conviction, entered pursuant to a guilty plea, of one count of child abuse, neglect, or endangerment resulting in substantial bodily harm and one count of child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Taliaoa argues the district court erred by denying his presentence motion to withdraw his guilty plea without 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 of that discretion.” *State v. Second Jud. Dist. Ct. (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). A defendant is entitled to an evidentiary hearing on his motion to withdraw a guilty plea if there are factual allegations not belied by the record that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Taliaoa claimed he had a fair and just reason to withdraw his plea because it was not entered knowingly, voluntarily and intelligently. Taliaoa alleged that his plea canvass demonstrated that he did not understand the theories of criminal liability underlying his conviction for child abuse, neglect, or endangerment. During its canvass, the district court read aloud the four alternative theories of criminal liability alleged in the second amended information and asked Taliaoa if that was what he did. Taliaoa then asked, “So I’m able to plead out to one of those, right?” The court explained that Taliaoa only had to agree to one of the alternative theories of criminal liability to which Taliaoa replied “[y]es.” Taliaoa thus affirmatively acknowledged that he understood he needed to only agree to one of the factual bases underlying the charge. Prior to this exchange, counsel stated that he had explained to Taliaoa that, because the charge had been “pled in the alternative,” Taliaoa did not “have to admit all of those things” but rather “he can admit to one of those things.” In light of Taliaoa’s statements at the plea canvass affirming his understanding of the theories of criminal liability, he failed to demonstrate his plea was not entered knowingly, voluntarily and intelligently. Accordingly, Taliaoa is not entitled to relief based on this claim.

Taliaoa 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 demonstrate a fair and just reason to withdraw a guilty plea before sentencing, “a defendant 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 the defendant would not have pleaded guilty and would have insisted on going to trial.” *Id.*; *see also 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). Taliaoa had to raise claims supported by specific factual allegations that were 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.

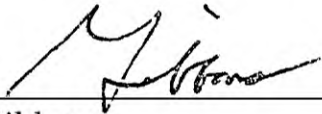
Taliaoa claimed counsel was ineffective for coercing him into pleading guilty, withholding exculpatory evidence, conspiring against him with the prosecutor, failing to communicate with him, and failing to investigate. Taliaoa’s bare claim failed to explain how counsel coerced him or conspired against him, what investigation counsel should have done, or how counsel’s failure to communicate with him or provide exculpatory evidence impacted Taliaoa’s decision to plead guilty. Accordingly, Taliaoa 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. Therefore, Taliaoa is not entitled to relief based on this claim.

Taliaoa also argues on appeal that he had fair and just reasons to withdraw his plea because he did not understand the sentencing

structure and counsel failed to correct the presentence investigation report. 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).

After considering the totality of the circumstances, we conclude Taliaoa failed to demonstrate a fair and just reason to permit withdrawal of his plea. Therefore, we conclude Taliaoa 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. Mary Kay Holthus, District Judge
Adras & Altig Attorneys at Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk