


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BYRON JOHNWILLIAM MANNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87708-COA

FILED

OCT 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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DEPUTY CLERK

ORDER OF AFFIRMANCE

Byron Manning appeals from a judgment of conviction, entered pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Manning 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 the motion “for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). “[T]he 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).

In his motion, Manning claimed that he did not have sufficient time to decide whether he wanted to accept the State’s offer at the settlement conference and that he felt pressured to accept the offer. The district court conducted an evidentiary hearing, during which defense counsel, Manning’s mother, and Thomas Ericsson, counsel for Manning’s codefendant, testified.¹ The district court determined that Manning failed to demonstrate a fair and just reason for withdrawing his plea. In particular, the district court found that Manning had voluntarily participated in the settlement conference that resulted in the guilty plea agreement and that Manning did not present any evidence as to whether a request was made to keep the offer open. The district court’s findings are supported by the record.

Testimony from the witnesses indicated that the settlement conference took place from approximately 1:30 p.m. to 5:00 p.m. Defense counsel testified that she requested the settlement conference and that she reviewed the settlement conference acknowledgement form with Manning, which specified that his participation was voluntary. Counsel also testified that the judge conducting the settlement conference informed everyone that participation was voluntary and that they could leave at any time. Although Manning’s mother testified that Manning had approximately 10 to 15 minutes to decide whether to accept the State’s offer, and counsel

¹Manning did not testify at the evidentiary hearing.

testified that she did not have “too long” to review the guilty plea agreement with Manning, Manning did not present any evidence indicating that he had sought additional time to consider the State’s offer or that he did not understand any specific provisions of the plea agreement.²

Counsel testified that Manning ultimately accepted a deal with a larger sentence than what he had previously indicated he was willing to accept. However, counsel further testified that she advised Manning to accept the State’s offer because of a voicemail she heard for the first time during the settlement conference.³ Although counsel could not recall the specifics of the voicemail, counsel testified that it was a “devastating” voicemail Manning had left on the victim’s sister’s phone. Ericsson testified that Manning threatened to kill the victim’s sister and people in her family in the voicemail. Counsel testified she informed Manning that, in her opinion, if the case went to trial and the jury heard the voicemail, he would

²In the guilty plea agreement, the parties stipulated to recommend a sentence of 18 years to life in prison for Manning’s guilty plea to second-degree murder with the use of a deadly weapon. We note that Manning was initially charged with murder with the use of a deadly weapon; assault with a deadly weapon, victim a vulnerable person; assault with a deadly weapon constituting domestic violence; and eight counts of discharging a weapon where a person might be endangered.

³Counsel acknowledged the State informed her that the voicemail was contained on Manning’s phone and that the State had provided her with a download of Manning’s phone prior to the settlement conference. However, counsel testified that she had not reviewed the voicemails contained on Manning’s phone prior to the settlement conference because she had been reviewing bodycam video at that time.

probably be convicted of first-degree murder and he could spend the rest of his life in prison.

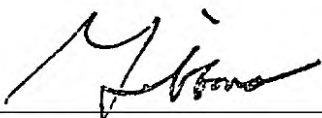
To the extent Manning alleged that he felt pressured by counsel to accept the plea deal, counsel's candid advice about the possible outcome of a trial does not constitute evidence of coercion. *See Stevenson*, 131 Nev. at 604, 354 P.3d at 1281 (stating "undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act" (internal quotation marks omitted)); *see also Stocks v. Warden*, 86 Nev. 758, 761, 476 P.2d 469, 471 (1970) ("A guilty plea is not compelled . . . when motivated by the defendant's desire to accept certainty or probability of a lesser penalty rather than to face the possibility of a higher penalty."). Counsel also testified that neither she nor the settlement conference judge coerced Manning into accepting the State's offer, and Ericsson testified that he never saw anything at the settlement conference that he believed was coercive or threatening toward Manning.

Moreover, during the plea canvass, Manning stated that he understood his participation in the settlement conference was voluntary, that he participated of his own free will, and that no one had forced or threatened him to enter into the guilty plea agreement during the settlement conference. Manning informed the district court during the canvass that his plea was voluntary, that no one had forced or threatened him to enter his plea, and that no one had made any promises to him to get him to enter the plea other than what was contained in the guilty plea agreement. Manning did not indicate that he wanted additional time to

review the plea agreement or that he did not understand any provision of the plea agreement.

In light of the foregoing, we conclude the district court did not abuse its discretion in determining that Manning failed to demonstrate a fair and just reason for withdrawing his guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Waldo Law, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk