


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN MICKEY CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88036-COA

FILED

NOV 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

John Mickey Castro appeals from a judgment of conviction, entered pursuant to a nolo contendere plea, of obtaining money by false pretenses. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Castro argues the district court erred by denying his presentence motion to withdraw his plea.¹ 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

¹We note that “[a] nolo contendere plea is equivalent to a guilty plea” insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

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).

In his motion, Castro claimed his plea was not entered knowingly because counsel was ineffective for failing to inform him that the victim had died. 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). A defendant must meet two criteria to establish ineffective assistance of counsel sufficient to invalidate their nolo contendere plea: (1) "a defendant must show counsel's performance was deficient in that it fell below an objective standard of reasonableness" and (2) "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.*

The district court conducted an evidentiary hearing regarding Castro's motion where only counsel testified. The district court found that counsel informed Castro about the victim's death prior to the entry of Castro's plea and that counsel believed the State could still prove the elements of the offense notwithstanding the victim's death because other evidence existed. These findings are supported by the record. Further, Castro failed to produce any evidence indicating he would not have entered his plea had counsel informed him of the victim's death. Accordingly, Castro

failed to demonstrate counsel's performance was deficient or a reasonable probability he would not have entered his nolo contendere plea and would have insisted on proceeding to trial but for counsel's alleged error. Therefore, we conclude the district court did not abuse its discretion by denying Castro's motion based on this claim.

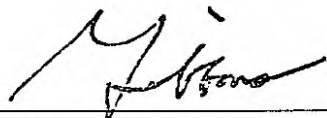
Castro also appeared to contend that he had a fair and just reason to withdraw his plea because it was entered equivocally, as demonstrated by the circumstances surrounding his plea agreement being amended. The agreement was changed to indicate Castro was entering a nolo contendere plea and not a guilty plea. The district court found that it asked Castro "very specific questions" about changing his plea from a guilty plea to a nolo contendere plea and that the transcript of the plea colloquy did not reflect "a lack of understanding or wanting to change his mind" and instead "affirm[ed] that he was going to enter a plea other than not guilty." These findings are supported by the record.


During the plea colloquy, the district court asked Castro whether he committed the offense as alleged by the State. Castro stated that he did not forge the check because it was not his signature or writing on it. Thereafter, counsel requested, and the State agreed, that Castro's guilty plea be changed to a nolo contendere plea. After both the court and Castro's counsel explained to Castro what a nolo contendere plea entailed, Castro stated he wanted to enter a nolo contendere plea. Based on these facts, we conclude that Castro unequivocally understood and agreed to amend his plea from guilty to nolo contendere. Therefore, we conclude the

district court did not abuse its discretion by denying Castro's motion based on this claim.

Based on the totality of the circumstances, we conclude Castro failed to demonstrate a fair and just reason to withdraw his plea. Therefore, we conclude Castro 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. Lynne K. Jones, Chief Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk