

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORNELIUS THOMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87573-COA

**FILED**

FEB 25 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Cornelius Thomas appeals from a judgment of conviction, entered pursuant to a guilty plea, of robbery and battery with the use of a deadly weapon resulting in substantial bodily harm. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Thomas argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. In his motion, he claimed counsel was ineffective for failing to convey a previous plea offer to him. Prior to Thomas's preliminary hearing, the State extended an offer in which Thomas would plead guilty to one count of robbery and the parties would be free to argue. Thomas ultimately took a different plea offer after waiving his preliminary 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). "[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 that discretion." *State v. Second Jud. Dist. Ct. (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).


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 a guilty 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.* Counsel has a duty to convey favorable plea offers to the client. *See Missouri v. Frye*, 566 U.S. 134, 145 (2012).


The district court held an evidentiary hearing on Thomas's motion. Counsel testified he remembered the previous plea offer but did not specifically remember conveying the offer to Thomas. However, counsel testified it was his practice to convey all offers. He also testified he and Thomas discussed the case several times, including the facts, possible defenses, and the hope for a "therapeutic" resolution to the case rather than prison time. Counsel testified he had his assistant send Thomas all of the discovery, twice. Counsel testified the offer would have been included in both sets of discovery. Thomas testified he did not know anything about the offer until counsel sent him the discovery the second time, which was just


after he pleaded guilty. He also testified that he and counsel never discussed the facts or circumstances of his case.

The district court found that counsel was credible and Thomas was not. The district court also found that counsel likely conveyed the offer and that Thomas knew about the offer from the first discovery disclosure. The district court concluded that, based on the totality of the circumstances, Thomas failed to demonstrate a fair and just reason to withdraw his plea. The findings of the district court are supported by the record, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Therefore, we conclude the district court did not abuse its discretion by denying the motion to withdraw guilty plea. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. David A. Hardy, District Judge  
Law Office of Jeannie Hua  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk