

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEY KEATON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

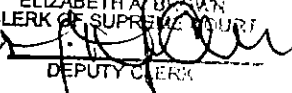
No. 88384-COA

JOEY KEATON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88385-COA

FILED

MAR 24 2025

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

*ORDER VACATING JUDGMENTS OF CONVICTION AND
REMANDING*

Joey Keaton, Jr., appeals from judgments of conviction entered pursuant to guilty pleas. In district court case no. CR21-0342 (Docket No. 88384), Keaton was convicted of being a felon in possession of a firearm. In district court case no. CR21-0493 (Docket No. 88385), Keaton was convicted of sex trafficking of a child under 18. Second Judicial District Court, Washoe County; Tammy Riggs, Judge.

Keaton argues the district court abused its discretion by denying his presentence motions to withdraw his guilty pleas without conducting an evidentiary hearing or appointing conflict-free counsel. 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 making its determination, the district court is required to conduct an evidentiary hearing if the defendant raises claims that are not belied by the record and that would, if true, entitle him to relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The 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).


Here, defense counsel filed identical presentence motions to withdraw Keaton's guilty pleas. The motions alleged that Keaton's pleas were invalid based on the ineffective assistance of defense counsel. The motions also alleged Keaton and defense counsel had an actual conflict of interest and sought the appointment of conflict-free counsel to represent Keaton in his claim of ineffective assistance of counsel as a basis for withdrawing his guilty pleas.


Because Keaton alleged counsel's ineffective assistance rendered his guilty pleas invalid, we conclude the district court abused its discretion by not appointing conflict-free counsel to represent Keaton during the pendency of his motions to withdraw his guilty pleas. By requiring defense counsel to argue Keaton's motions to withdraw his guilty plea, the district court placed defense counsel in the untenable position of having to argue their own ineffectiveness, which in turn placed counsel in direct conflict with Keaton. *See United States v. Del Muro*, 87 F.3d 1078, 1080 (9th Cir. 1996) (requiring trial counsel to prove his own ineffectiveness creates an inherent conflict of interest that deprives the defendant of his Sixth Amendment right to effective assistance of counsel). Accordingly, we

ORDER the judgments of conviction VACATED AND REMAND this matter to the district court with instructions to appoint

conflict-free counsel to represent Keaton in his motions to withdraw his guilty pleas.¹


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

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

¹If after appointing conflict-free counsel the district court determines no fair and just reason exists sufficient to permit withdrawal of the guilty pleas, the district court shall reinstate the judgments of conviction.