IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN JAMES BANDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88057

FILED

APR 17 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of murder with use of a deadly weapon. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Appellant Brian Bandy argues the district court abused its discretion by denying Bandy's presentence motion to withdraw the guilty plea. *See Johnson v. State*, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007) (reviewing a district court's determination concerning the validity of a plea for an abuse of discretion). We disagree.

"[G]uilty pleas are presumptively valid," *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004), but "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). We give deference to the district court's factual findings that are supported by the record. *Id.* at 604, 354 P.3d at 1281.

Bandy contends that the district court should have allowed him to withdraw his guilty plea because he was suffering from mental health issues when he entered the plea. Bandy further argues he was incompetent when he entered the guilty plea because he was deemed incompetent more than one year after the entry of plea. Because of this, Bandy also contends that he received ineffective assistance of counsel because counsel at the time of the entry of plea did not investigate or raise Bandy's competency issues. *See Sunseri v. State*, 137 Nev. 562, 566, 495 P.3d 127, 132 (2021) (holding that ineffective assistance of counsel can constitute a fair and just reason for withdrawing a guilty plea).

The district court thoroughly canvassed Bandy before he entered the guilty plea, and the record reflects that Bandy was responsive and answered the questions appropriately. *See Crawford v. State*, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001) ("A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently."), *overruled on other grounds by Stevenson v. State*, 131 Nev. 598, 354 P.3d 1277 (2015). Moreover, Bandy did not appear impaired or unable to understand the proceedings. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) ("The test to be applied in determining competency 'must be whether [the defendant] has sufficient *present ability* to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" (emphasis added) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960))). While Bandy was later found incompetent, there is no contemporaneous evidence in the record that Bandy was incompetent when he entered the guilty plea.

Further, at a hearing several months after entering the guilty plea, Bandy presented an articulate statement he had prepared in advance explaining to the court that he wished to withdraw his guilty plea and requesting new counsel. Bandy's request for new counsel was granted. Months after that, Bandy's new counsel filed a motion for a competency evaluation based on Bandy's recent refusal to visit with counsel, and Bandy was eventually deemed incompetent. *See Indiana v. Edwards*, 554 U.S. 164, 175 (2008) (noting that competency can vary over time). After Bandy was restored to competency, Bandy filed a motion to withdraw his guilty plea.

At the hearing, Bandy testified that he accepted the guilty plea deal because of his social anxiety. Bandy also testified that at that time he felt anxious, depressed, and stressed. But that alone is not sufficient to support withdrawing the guilty plea. *See Stevenson*, 131 Nev. at 605, 354 P.3d at 1281 ("Although deadlines, mental anguish, depression, and stress are inevitable hallmarks of pretrial plea discussions, such factors considered individually or in aggregate do not establish that [a defendant's] plea was involuntary." (quoting *Miles v. Dorsey*, 61 F.3d 1459, 1470 (10th Cir. 1995))). Bandy further testified that he was given only two days to decide whether to accept the guilty plea because of prior counsel's pending vacation. This assertion is contradicted by the record, however, as Bandy did not enter the guilty plea until after counsel returned. Further, Bandy's prior counsel testified that Bandy did not make the decision to accept the plea until after counsel's vacation and that counsel was fully prepared to go to trial if Bandy declined the plea deal.

Moreover, Bandy's prior counsel testified that while it was clear Bandy was suffering from mental health issues, counsel never felt that

Bandy did not understand the proceedings or could not assist in his own defense. *See Calambro v. Second Jud. Dist. Ct.*, 114 Nev. 961, 971-72, 964 P.2d 794, 801 (1998) (recognizing that a mental illness does not automatically render a defendant incompetent). Prior counsel testified that he was able to have productive discussions with Bandy about the defense and the ongoing plea negotiations with the prosecution. Prior counsel further testified that Bandy first expressed a desire to withdraw the guilty plea, months after he entered it, when the sentencing hearing was rescheduled.

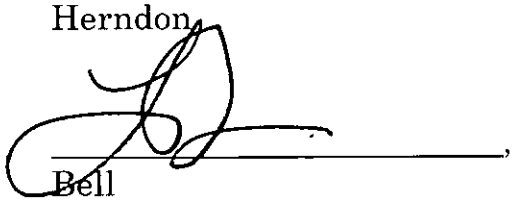
Ultimately, the district court found, based on the totality of the circumstances, that Bandy was competent when he entered the guilty plea and did so knowingly, voluntarily, and intelligently. *See Stevenson*, 131 Nev. at 603, 354 P.3d at 1281 ("[T]he district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just."); *see also Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) ("This court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact."). And because the record supports the district court's and prior counsel's conclusions that Bandy was competent when he entered the guilty plea, Bandy has not shown that prior counsel was deficient or objectively unreasonable for failing to investigate and raise the issue of Bandy's competency. *See Sunseri*, 137 Nev. at 566, 495 P.3d at 132 ("To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, 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.").

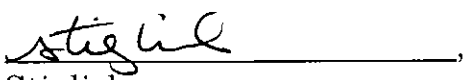
Thus, the record supports the district court's findings, and the district court did not abuse its discretion in denying the motion. *See Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) ("[T]his court will presume that the lower court correctly assessed the validity of the [guilty] plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion." (internal quotation marks omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Herndon



_____, J.
Bell



_____, J.
Stiglich

cc: Hon. Kathleen A. Sigurdson, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk