

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AHUNER YANES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90236-COA

FILED

NOV 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ahuner Yanes appeals from a judgment of conviction, entered pursuant to a guilty plea, of sexual assault of a minor under 16 years of age and first-degree kidnapping. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Yanes argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea without conducting an evidentiary hearing because he presented a fair and just reason to withdraw his 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. 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). A defendant is entitled to an evidentiary hearing on his motion to

withdraw a guilty plea if there are factual allegations not belied by the record that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

In his motion, Yanes alleged he had a fair and just reason to withdraw his plea because it was not voluntarily, knowingly, and intelligently entered. Yanes alleged he had an inadequate understanding of the plea agreement because he (1) lacked time to analyze the offer and (2) speaks Spanish but the written plea agreement was in English. Yanes contended his lack of understanding was "compounded by the extreme pressure of having to decide whether to accept" the agreement "while the jury was waiting in the hallway and his trial was about to begin."

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). "A court must be able to conclude from the oral canvass, any written plea memorandum and the circumstances surrounding the execution of the memorandum (*i.e.*, did the defendant read it, have any questions about it, etc.) that the defendant's plea was freely, voluntarily and knowingly made." *Id.* at 1106, 13 P.3d at 448.

Yanes did not specifically argue in his motion which aspects of the plea agreement he did not understand.¹ Further, Yanes was assisted

¹During a sentencing hearing that occurred prior to the filing of Yanes' motion to withdraw his plea, Yanes stated that he wanted to withdraw his plea as to Count 2 because he did not understand the first-degree kidnapping charge. The district court appointed conflict-free counsel

by a Spanish-language interpreter during the proceedings, including during the entry of his plea. With the assistance of the interpreter, Yanes represented during the plea canvass that the charging document and the guilty plea agreement had been “interpreted into Spanish” before he signed the agreement, that he understood the charges he was facing, that he understood the agreement, and that he did not have any questions.

Finally, the record reflects the district court allowed Yanes and his counsel to remain in the courtroom during a lunch recess to discuss the State’s plea offer. The recess started at 12:21 p.m. and proceedings resumed at 2:35 p.m. When the parties came back on the record, Yanes represented that he wanted to take the offer. Based on this, there is no indication that the stress or pressure Yanes felt went beyond that normally experienced by defendants during pretrial plea discussions. *See Stevenson*, 131 Nev. at 604, 354 P.3d at 1281 (recognizing “time constraints and pressure from interested parties exist in every criminal case”); *see also Miles v. Dorsey*, 61 F.3d 1459, 1470 (10th Cir. 1995) (“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.”). In light of these circumstances, Yanes failed to overcome the presumption that his plea was validly entered, and

for the purpose of filing Yanes’ motion. And while Yanes included these facts in the “summary of the case” section of the motion, he did not specifically argue his plea was not voluntarily, knowingly, and intelligently entered as it related to the first-degree kidnapping charge. We further note that Yanes represented to the district court during the plea canvass that he understood the charges he was facing.

the district court reasonably concluded that Yanes failed to present a fair and just reason for withdrawing his plea.²

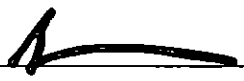
Yanes also argues the district court abused its discretion by failing to consider the totality of the circumstances when denying his motion. We disagree. While the district court did not explicitly state it had considered the totality of the circumstances prior to orally denying Yanes' motion, the State argued for denial based on the totality of the circumstances just prior to the district court's decision. Nothing in the record indicates that the district court did not consider the totality of the circumstances. For these reasons, we conclude the district court did not abuse its discretion in denying Yanes' presentence motion to withdraw his guilty plea without conducting an evidentiary hearing.

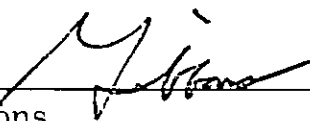
Finally, Yanes argues his aggregate sentence of 30 years to life in prison amounts to cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

²On appeal, Yanes argues additional reasons why his plea was not voluntarily, knowingly, and intelligently entered. We decline to consider these new arguments for the first time on appeal. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

The sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 200.320(2)(a); NRS 200.366(3)(b), and Yanes does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not disproportionate to the crimes and does not constitute cruel and unusual punishment. For these reasons, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Attorney General/Carson City
Clark County District Attorney
Special Public Defender
Eighth District Court Clerk