IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAJOR HOWARD SANFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91007-COA



*ORDER OF AFFIRMANCE*

Major Howard Sanford appeals from a judgment of conviction, entered pursuant to a guilty plea, of first-degree murder, robbery with the use of a deadly weapon, and assault with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Sanford was involved in three different altercations. In the first altercation, Sanford struggled with a neighbor to take a gun from the neighbor's pocket. In the ensuing battle for the gun, the neighbor was shot in the leg and Sanford walked away with the gun. In the second altercation, six days later, Sanford shot and killed a man in Sanford's apartment. There were signs of a struggle, and both Sanford and the victim's DNA were found on the gun. The victim was shot once in the side of the head and multiple times in the back. After the second altercation, Sanford went outside his apartment and started shooting at the Las Vegas Academy. No one was injured, but he did shoot a couple of cars. Sanford was identified as the school shooter by several witnesses. The gun used in both the murder and the school shooting was the gun taken from the neighbor in the first altercation.

Sanford argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. 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). We give deference to the district court's factual findings if they are supported by the record, *id.*, and review the district court's decision on a motion to withdraw a guilty plea for an abuse of discretion, *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

Ineffective assistance of counsel could be a fair and just reason for withdrawing a guilty plea. *Sunseri v. State*, 137 Nev. 562, 566, 495 P.3d 127, 132 (2021) (concluding that ineffective assistance of counsel may constitute a fair and just reason to withdraw a plea). To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner 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 petitioner would not have pleaded guilty and would have insisted on going to trial. *See id; see also Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

In his motion, Sanford contended he had a fair and just reason for withdrawing his plea because counsel improperly induced Sanford into

pleading guilty. Sanford claimed counsel sent him three letters wherein counsel improperly induced him to plead guilty by informing him that the district court judge would impose the maximum sentence for each offense if Sanford went to trial on the 16 charges brought by the State. Sanford also claimed counsel improperly induced him to plead guilty because the letters contained misinformation that confused him. The misinformation included: (1) incorrect information regarding the terms of imprisonment for several of the counts if he went to trial; (2) referring to the minimum term for murder as a flat 20 years; and (3) providing him with inconsistent information regarding the highest possible minimum terms he could receive.

The district court held an evidentiary hearing on this claim. After hearing testimony from Sanford and counsel, the district court found that the letters sent to Sanford were counsel's candid advice about the likely outcome at trial and that this advice was reasonable and fair. The record supports the findings of the district court. Counsel's first letter to Sanford did contain incorrect prison terms for some of the counts and imprecisely referred to the minimum prison term for first-degree murder as 20 years flat. However, counsel sent Sanford a second letter a day later that acknowledged the errors in the first letter and provided correct information regarding the maximum sentences for each count if he went to trial. A third letter also contained correct information regarding the maximum sentences for each count. While the letters only discussed the maximum sentences Sanford could receive, the letters were couched in terms that Sanford "could" receive these sentences and that it was counsel's belief the district court judge was likely to give him the maximum sentences. Further, counsel testified the letters constituted his opinion and he discussed with

Sanford that the district court had discretion to sentence Sandford within the range of punishments. Candid advice about the likely outcome at trial does not constitute coercion or evidence of deficient performance. *Cf. Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his or her client); *see also Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974) ("A guilty plea is not coerced merely because motivated by a desire to avoid the possibility of a higher penalty.").

Further, we agree the second and third letters contained incorrect information regarding the highest minimum term Sanford could receive. In the first letter, counsel correctly stated the highest possible minimum sentence Sanford could receive was 90 years. In the second and third letters, counsel stated the highest possible minimum sentence was 81 years and 113 years, respectively, neither of which was correct. However, all three terms were similar in that they constituted lengthy prison terms which could lead to Sanford spending the rest of his life in prison. Further, the plea agreement that Sanford entered into limited his exposure on the minimum portion of the first-degree murder charge to 20 years in prison and specified the State would not oppose concurrent time between the two other counts, much less than the 81, 90, or 113 years outlined in the letters. Given this information, Sanford failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had counsel presented correct information regarding the highest minimum prison term he could receive. Therefore, we conclude Sanford failed to demonstrate, under the totality of the circumstances, a fair and just reason to withdraw his plea, and the district court did not abuse its discretion by denying this claim.

Sanford also argued in his motion that he had a fair and just reason for withdrawing his plea because Sanford lost confidence in counsel defending him at trial. Sanford claimed counsel repeatedly told him his self-defense claims would not prevail at trial despite the fact that there was evidence to support his claims. At the evidentiary hearing, Sanford testified that counsel failed to provide him with all of his discovery and specifically failed to provide him with: (1) a CAD report that showed the neighbor involved in the first altercation changed his story several times; (2) grand jury testimony from a crime scene analyst that there was a struggle where the victim was killed; and (3) DNA evidence that showed there was a mixture of DNA on the firearm that killed the victim.

The district court found that counsel's advice about the likelihood of prevailing at trial based on a theory of self-defense was reasonable and candid advice about the likely outcome at trial. The district court also found there was no evidence that counsel refused to present Sanford's theory of self-defense at trial. Further, the district court implicitly denied Sanford's claim that counsel failed to give him all his discovery.

At the evidentiary hearing, counsel testified he did not believe self-defense was a viable defense because Sanford reached for the gun from the neighbor during the first altercation; thus, he was the initial aggressor. Counsel also testified that the victim in the second altercation was shot in the back, which indicated that Sanford did not shoot the victim in self-defense. Further, counsel testified Sanford had several prior violent felonies that would have been admissible if he testified and Sanford did not have a viable defense to shooting at the school. And as stated above, candid

advice about the likely outcome at trial is not evidence of deficient performance.

Further, the district court's denial of Sanford's motion demonstrates that the district court found counsel's testimony credible and Sanford's testimony incredible regarding Sanford's allegation that his counsel withheld discovery from him. This is supported by the record. Although Sanford testified that counsel failed to discuss any discovery with him, he also stated that the investigator provided him with some discovery. Sanford further testified that counsel showed him the evidence against him but did not show him the evidence that would support self-defense. Counsel testified he provided Sanford with a copy of all the discovery and went over the CAD report, grand jury testimony, and the DNA evidence with him. Based on this record, we conclude Sanford failed to demonstrate counsel's performance was deficient regarding the production of discovery.

Therefore, we conclude Sanford failed to demonstrate, under the totality of the circumstances, a fair and just reason to withdraw his plea, and the district court did not abuse its discretion by denying this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk