

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLAMEN JOSEPH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90916-COA

FILED

MAY 21 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Clamen Joseph appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted sexual assault. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Joseph 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).

In his motion, Joseph contended his plea was not voluntarily and knowingly entered because he did not understand English “very well” and he did not have the aid of an interpreter. A guilty plea is presumptively

valid, and a defendant carries the burden of establishing the plea was not entered voluntarily or knowingly. *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *Id.*; *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

The district court held an evidentiary hearing on the motion, at which defense counsel, Joseph,¹ and the person who prepared the presentence investigation report, Tarah Sanchez-Smith, testified. The district court found that Joseph understood the English language and that he elected not to use an interpreter despite having ample opportunity to request one. The district court's findings are supported by the record. Sanchez-Smith testified that the following was true and accurate: she met with Joseph to conduct the presentence investigation; Joseph answered her questions appropriately in English and never indicated that he did not understand anything; Joseph was able to relay what he believed happened in his case; Joseph was able to answer questions regarding his childhood, his employment, and his criminal history; at no point did Joseph ask for or require an interpreter; and Joseph did not indicate he had a hard time understanding her or the English language.

Defense counsel testified that, when she took over the case, it was clear to her that "there were some issues of understanding," but that she asked Joseph if he needed an interpreter, and Joseph indicated that he

¹We note that conflict-free counsel did not call Joseph as a witness; rather, Joseph was sworn in to answer some questions from the court regarding his failure to request an interpreter.

preferred to proceed without one. Defense counsel also testified that (1) she was able to communicate with Joseph in English and went over the guilty plea memorandum with Joseph in English; (2) although she had to “explain things to [Joseph] quite a lot,” she believed Joseph understood the terms of the plea; (3) Joseph was able to ask her questions, and when she responded, Joseph indicated he understood; and (4) Joseph never indicated that he did not understand the English language or that he needed an interpreter. Similarly, Joseph’s psychosexual and risk assessment indicates Joseph had “sufficient English-speaking skills to undergo a reliable and valid evaluation,” even though there were times where the evaluator and Joseph did not understand each other.

Moreover, the guilty plea memorandum indicates that Joseph read and understood everything contained within it, including the charge, the elements of the offense, his possible defenses, and the consequences of his plea, and that he was satisfied with counsel’s advice and representation. The district court also found that a thorough plea canvass was conducted and that Joseph never asked for an interpreter. Joseph has not included a copy of the plea canvass transcript in his appendix on appeal; therefore, we presume this document supports the district court’s decision. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009) (“The burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error.”); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (“When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the

district court's decision.”). In light of the foregoing, Joseph failed to overcome the presumption that his plea was entered voluntarily and knowingly, and we conclude the district court did not abuse its discretion in determining Joseph failed to establish a fair and just reason for withdrawing his guilty plea.

Joseph also contended that he had a fair and just reason for withdrawing his plea because he was factually innocent of attempted sexual assault. Although a “credible claim of factual innocence” may constitute a fair and just reason to permit withdrawal of a guilty plea, see *Mitchell v. State*, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993), a bare assertion of innocence is not, in and of itself, sufficient to establish a fair and just reason for withdrawing a guilty plea, see *Commonwealth v. Carrasquillo*, 115 A.3d 1284, 1285, 1290 n.6 (Pa. 2015). As previously noted, conflict-free counsel did not call Joseph as a witness at the evidentiary hearing; rather, conflict-free counsel merely informed the district court that Joseph’s claim of factual innocence would be based on Joseph’s own account of what occurred as there were no third-party witnesses. Joseph did not present any other evidence to support his claim of factual innocence. Therefore, Joseph failed to demonstrate a credible claim of factual innocence, and we conclude the district court did not abuse its discretion in determining Joseph failed to establish a fair and just reason for withdrawing his guilty plea.²

²To the extent Joseph raises additional facts and argument that were not presented in his motion below, we decline to consider them for the first time on appeal. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

For the foregoing reasons, we conclude the district court did not abuse its discretion in denying Joseph's presentence motion to withdraw his guilty plea, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

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