

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82747-COA

FILED

JUL 08 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Arthur Moore appeals from a judgment of conviction, entered pursuant to a guilty plea, of second-degree murder, conspiracy to commit robbery, and robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Moore argues the district court erred by denying his presentence motion to withdraw his 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). In considering the motion, “the 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. We give deference to the district court’s factual findings as long as they are supported by the record. *Id.* at 604, 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 Judicial Dist. Court (Bernardelli)*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

First, Moore argued he should be allowed to withdraw his plea because his counsel failed to fully explain the consequences of the plea agreement to him. Moore claimed he never agreed to serve prison time beyond the stipulated sentence for the second-degree murder count and that counsel led him to believe his sentences would run concurrently.

The written plea agreement, which Moore read and signed, explicitly stipulated that the sentence for the conspiracy to commit robbery count would run consecutively to the sentence for the second-degree murder count. Additionally, during the plea canvass, Moore replied “yes” when the trial-level court asked if he understood that consecutive means he would “have to do the first one and then the second one.” Moore thus failed to demonstrate he did not understand he could serve a prison sentence consecutive to the stipulated sentence for the second-degree murder count.

Second, Moore argued that he should be allowed to withdraw his plea because his counsel delegated his responsibility to associates who were inexperienced and lacked the requisite knowledge or understanding of Moore’s case. Moore alleged the inability to review the plea agreement directly with counsel pressured him to make a decision. Counsel was present during Moore’s plea canvass wherein Moore informed the district court that he had discussed the plea agreement with his lawyer and that all of his questions were answered to his satisfaction before he signed the agreement. Moore failed to explain what knowledge or understanding of his case the associates lacked and presents no cogent argument on appeal

as to how the district court erred. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Third, Moore argued he should be allowed to withdraw his plea because his counsel pressured him into pleading guilty by telling him he would go to trial immediately and lose, resulting in his serving a life sentence in prison. Candid advice about the possible outcome of a trial is not evidence of deficient performance. *See 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). Additionally, time constraints exist in every criminal case, and there is no indication in this case that the deadline improperly influenced Moore's plea. *See Stevenson*, 131 Nev. at 604-05, 354 P.3d at 1281.

Finally, Moore argued he should be allowed to withdraw his plea because he was confused about the meaning of concurrent and consecutive sentences, has a "remedial" I.Q., and "is of special needs." During his plea canvass, Moore told the trial-level court that he read and understood English and had graduated from high school. He also answered "yes" when the trial-level court asked if he understood its explanation of what "consecutive" means. Additionally, Moore failed to explain why his I.Q. is described as "remedial," what special needs he possesses, or how these facts rendered him incapable of understanding the difference between concurrent and consecutive sentences. And Moore presents no cogent argument on appeal as to how the district court erred.

In light of the totality of the circumstances in this matter, Moore failed to demonstrate a fair and just reason to permit withdrawal of his guilty plea. Therefore, we conclude Moore did not demonstrate the

district court abused its discretion by denying his motion to withdraw his guilty plea, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michelle Leavitt, District Judge  
The Law Office of Dan M. Winder, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk