

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEVELAND ROBINSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63569

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge. Petitioner Cleveland Robinson, Jr., raises four contentions on appeal.

First, Robinson contends that the district court abused its discretion in sentencing him. He asserts that the court relied on suspect evidence at the sentencing hearing. This claim falls outside the scope of claims permissible in a post-conviction habeas petition challenging a judgment of conviction based upon a guilty plea. *See* NRS 34.810(1)(a). Therefore, the district court did not err in denying this claim.

Second, Robinson contends that the district court erred in denying his claim that his guilty plea was not knowing and voluntary without conducting an evidentiary hearing. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also 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). Robinson failed to demonstrate that his plea was invalid. At the plea canvass, he responded appropriately to questions posed by the district court. He acknowledged that he read and understood the guilty plea agreement, indicated that he understood the rights he was waiving with the guilty plea, admitted that he committed the crime as described by the State during its factual proffer, and acknowledged that the district court was not bound by the plea negotiations. He had also been evaluated and found competent prior to the plea canvass. There is no indication in the record that Robinson suffered from a mental illness that impaired his ability to understand the legal proceedings. See NRS 178.400; see also *Godinez v. Moran*, 509 U.S. 389, 396-97 (1993); *Dusky v. United States*, 362 U.S. 402, 402 (1960).


Third, Robinson argues that the district court erred in denying his claim that his counsel was ineffective at the sentencing hearing for failing to argue strenuously in support of the bargained-for sentence, failing to argue that the reason Robinson failed to attend the prior sentencing proceeding was due to a lack of mental health medication, and failing to locate Robinson prior to the sentencing hearing and make sure he would appear. Robinson failed to demonstrate that counsel was ineffective. It was within the district court's discretion to sentence him to a term of imprisonment. Although he was eligible for the mental health court program, the district court concluded that a term of imprisonment was appropriate based on Robinson's prior record, which included offenses involving violence and firearms. Therefore, Robinson did not demonstrate that he was prejudiced by counsel's failure to argue more strenuously in support of the bargained for sentence or ensure his presence at the prior sentencing hearing. In addition, as Robinson admitted that he failed to

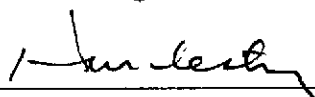
appear because his stepfather told him an incorrect time for the hearing, any argument by counsel that indicated he failed to appear because he did not have the proper medication would have contradicted these statements. Therefore, the district court did not err in denying this claim.

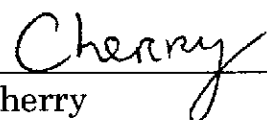
Fourth, Robinson contends that the district court erred in not addressing all the claims raised in his post-conviction petition and supplemental petition. *See* NRS 34.830(1). The district court order specifically addressed Robinson's ineffective assistance of counsel claim and claim that his plea was invalid and indicated that it granted the State's motion to dismiss and denied both petitions. While it did not make specific findings regarding the sentencing claim, as such a claim was not cognizable in a post-conviction petition challenging a judgment of conviction based upon a guilty plea, Robinson was not prejudiced by the district court's failure to make that finding.

Having considered Robinson's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Pickering

 _____, J.
Hardesty

 _____, J.
Cherry

cc: Hon. Scott N. Freeman, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk