

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73018

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Johnson appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on February 10, 2016, and the supplemental petition filed on July 14, 2016.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Johnson claims the district court erred by denying his claim counsel was ineffective for failing to request a competency hearing prior to his pleading guilty. Further, Johnson claims the district court erred by denying his claim his plea was not knowingly and voluntarily entered because he was incompetent at the time he entered his plea. Johnson claims he was incompetent because he is bipolar, suffers from schizophrenia, suffered a head injury while in jail, and he was not taking his psychotropic medications while in jail. Further, he claims he did not understand the

¹The district court construed Johnson's motion and request for an evidentiary hearing and modification of sentence, which was filed on August 18, 2015, as a petition for a writ of habeas corpus and appointed counsel to represent him. Counsel filed the abovementioned petition and supplemental petition.

charges against him, did not understand the sentence structure, and was not able to help his counsel in his defense.

To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

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). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. 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); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.


After holding an evidentiary hearing, the district court found counsel was not deficient and Johnson was not prejudiced by counsel's


performance. Further, the district court found Johnson's plea, under the totality of the circumstances, was valid. Specifically, the district court found counsel testified: he did not have any concerns regarding Johnson's competency and, during his interactions with Johnson, Johnson was always coherent and able to maintain focus; counsel was never notified of Johnson's alleged bipolar and schizophrenia issues; counsel never had a concern Johnson could not assist in his defense; had counsel had concerns about Johnson's competency he would have sought a referral to competency court; Johnson and counsel had numerous interactions and there were extensive discussions regarding the negotiations; Johnson was mostly concerned about the number of years of prison he would receive. The district court found counsel's testimony credible. Further, the district court found the plea canvass was thorough, Johnson failed to provide convincing evidence regarding his incompetency at the time he accepted his plea agreement, and Johnson was not seeking to invalidate another guilty plea taken near the same time as the instant plea based on competency issues.

Substantial evidence supports the district court's finding that counsel was not ineffective. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 60 P.2d 109, 113 (1983) (observing the test for determining competency is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him" (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960))). Further, based on the totality of the circumstances, the district court did not abuse its discretion by denying Johnson's claim his plea not knowingly

and voluntarily entered. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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