

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72602

FILED

NOV 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Elvin Turner appeals from an order of the district court denying his December 5, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Turner argues the district court erred by denying his claim that counsel was ineffective for not moving to dismiss his case when his April 14, 2016, arraignment was delayed because no prosecutor was present. Turner's claim was belied by the record, and he was thus not entitled to relief. *Cf. Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to an evidentiary hearing on a claim belied by the record). Justice court minutes indicate a prosecutor was present and the hearing was continued on the motion of defense counsel. We therefore conclude the district court did not err in denying this claim.

Turner next argues the district court erred by denying his claim that his guilty plea was invalid. Turner contended that, although the State

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

retained the right to argue for any sentence, he was to be sentenced to a term of 12 to 72 months, not the 28 to 72 months he received. Turner failed to carry his burden of proof that his plea was invalid. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Turner acknowledged in both his guilty plea agreement and in his colloquy he understood he could be sentenced to not less than one year and not more than six years. He further acknowledged in both the agreement and colloquy that sentencing was up to the district court and no one had promised him a particular sentence. The totality of the circumstances thus revealed Turner understood the consequences of his plea. *See State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). We therefore conclude the district court did not abuse its discretion in denying this claim, *see Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).


Turner next argues the district court erred by denying his *Miranda*² claim and his claim that his due process rights were violated by the delay of his April 14, 2016, arraignment. Turner challenged actions that occurred prior to the entry of his guilty plea, and his claims were thus waived. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). We therefore conclude the district court did not err in denying this claim.

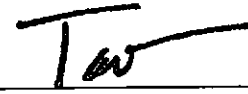
Finally, Turner argues his guilty plea was invalid because it was coerced, he was threatened at sentencing, the district court did not allow him to file a civil action at his sentencing hearing, and the Attorney General's Office filed false information in the Nevada Supreme Court resulting in the dismissal of his direct appeal. These are new arguments


²*Miranda v. Arizona*, 384 U.S. 436 (1966).

not raised below, and we therefore will not consider them. *See Rimer v. State*, 131 Nev. ___, ___ n.3, 351 P.3d 697, 713 n.3 (2015). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
John Elvin Turner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We deny Turner's motions seeking review of the Nevada Supreme Court's dismissal of his direct appeal. *Cf. Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (dismissing appeal for lack of jurisdiction where no court rule or statute permitted review of the district court's order).

In his November 1, 2017, motion requesting court reporter's transcripts, Turner asks that all of his justice- and district-court hearings be transcribed and he be provided with copies. No good cause appearing, we deny his request to have all hearings transcribed. We further deny his request for copies of his transcripts. Turner must seek copies of any transcript through a properly filed document filed in the district court. *See Peterson v. Warden*, 87 Nev. 134, 135-36, 483 P.3d 204, 205 (1971).