

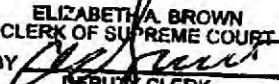
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MURRY SCOTT MCKINLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79577-COA

**FILED**

AUG 10 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Murry Scott McKinley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 1, 2018, and a supplemental petition filed on April 3, 2019. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

McKinley argues the district court erred by denying his claim that his plea was not knowingly, voluntarily, and intelligently entered without first conducting an evidentiary hearing. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "to correct a manifest injustice." NRS 176.165. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, McKinley argued his plea was not knowingly, voluntarily, or intelligently entered because he had taken medications prior to his change of plea hearing and those medications can cause changes in mental status, confusion, drowsiness, and problems with concentration. The district court found that the transcript of the change of plea hearing demonstrated McKinley understood his plea. He stated he understood the elements of the charges, the penal consequences of his guilty plea, and the rights he was giving up. Further, McKinley agreed he was not “under the influence of any alcohol, drugs, or medications today that would affect [his] ability to understand what’s happening today in court.” The district court also found that McKinley made other statements regarding wanting immediate sentencing and to be placed in a treatment program, which demonstrated he understood the proceedings. Further, there was no indication in the record that McKinley was confused or that he did not understand the proceedings.


The record supports the decision of the district court. Further, we conclude McKinley failed to support his claim with specific facts that are not belied by the record and, if true, would entitle him to relief. McKinley failed to allege what medication side effects he suffered from or how those side effects affected his ability to understand the proceedings. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.


Second, McKinley claimed his plea was not knowingly, voluntarily, or intelligently entered because counsel was ineffective for failing to fully explain the consequences of the habitual criminal enhancement. McKinley failed to allege what he did not understand regarding the consequences of the habitual criminal enhancement.

Therefore, he failed to support his claim with specific facts that are not belied by the record and, if true, would entitle him to relief. *See id.* Further, the guilty plea agreement stated the consequences of the habitual criminal enhancement, and McKinley acknowledged that he read and understood the plea agreement at the change of plea hearing. And McKinley acknowledged he discussed the plea agreement with counsel. The district court also discussed the penalty for the habitual criminal enhancement at the change of plea hearing and McKinley acknowledged he understood it. Thus, McKinley failed to demonstrate counsel was deficient, *see Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996), or that his plea was not knowingly, voluntarily, or intelligently entered. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Scott N. Freeman, District Judge  
Law Offices of Lyn E. Beggs, PLLC  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk