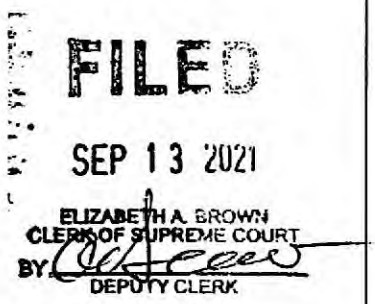
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT A. HARPER, III,
Appellant,
vs.
LT. KENNETH HARROUN, C.C.C.;
AND THE STATE OF NEVADA,
Respondents.

No. 82288-COA



ORDER OF AFFIRMANCE

Robert A. Harper, III, appeals from an order of the district court denying a postconviction petition for writ of habeas corpus filed on January 31, 2020. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Harper claims the district court erred by denying his petition without first conducting an evidentiary hearing. 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).

Harper first appeared to challenge the validity of his guilty plea on the grounds that he was incompetent at the time he entered it. 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 *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000); *see also Hubbard v. State*, 110 Nev. 671, 675, 877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. A defendant is incompetent to stand trial if he either lacks the ability to consult with his attorney with a reasonable degree of rational understanding or lacks a rational and factual understanding of the proceedings against him. *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

Harper claimed his mental health conditions inhibited his ability to understand the guilty plea agreement. Harper did not identify what mental conditions he was allegedly suffering from during the guilty plea proceedings. The district court found Harper gave no indication that he was not competent or did not understand the proceedings. The district court also found Harper made clear that he was not under the influence of any substance that might impair his comprehension at the proceedings. Further, the district court found the only mental health issue Harper reported was anxiety that did not render him incapable of understanding the proceedings or assisting in his defense. Finally, the district court found Harper confirmed his plea was knowing, intelligent, and voluntary through the guilty plea agreement and plea canvass. The record supports the district court's findings. Thus, Harper failed to demonstrate that he did not understand the guilty plea or was otherwise not competent to enter a guilty plea. Therefore, we conclude the district court did not abuse its discretion by denying this claim without conducting an evidentiary hearing.

Harper next claimed he received ineffective assistance from defense counsel. To demonstrate ineffective assistance of defense counsel

sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (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).

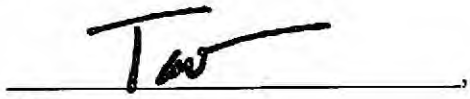
First, Harper asserted counsel should have requested a continuance to "address [Harper's] mental health concerns" rather than allowing Harper to enter a guilty plea. However, Harper also alleged counsel advised him that the trial court would not likely grant the continuance and that Harper would likely lose the opportunity to accept a favorable plea offer. Harper failed to demonstrate that this advice to accept the plea offer rather than request a continuance fell below an objective standard of reasonableness. Further, Harper did not allege that he would not have pleaded guilty and would have insisted on going to trial had counsel requested a continuance or competency hearing. Therefore, we conclude the district court did not err by denying these claims without conducting an evidentiary hearing.

Second, Harper claimed counsel was ineffective in post-plea proceedings. Harper retained new counsel after he entered his guilty plea, and he appeared to suggest new counsel was involved in inappropriate

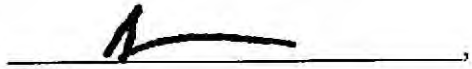
business dealings and improperly kept Harper's records after Harper was sentenced. Harper failed to state how he was prejudiced by new counsel's alleged conduct. Therefore, we conclude the district court did not err by denying these claims without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Robert A. Harper, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[1]Harper claims for the first time on appeal that counsel coerced him into pleading guilty. We decline to consider this argument as it was not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).