

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BOBBY RAY WRIGHT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85041-COA

**FILED**

**MAY 08 2023**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bobby Ray Wright appeals from a judgment of conviction, entered pursuant to a guilty plea, of discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Wright argues this court should consider his appeal on the merits because he did not knowingly and voluntarily waive his right to appeal from the judgment of conviction. In particular, Wright argues he did not understand his rights and that the district court did not explain to him that he was waiving his right to appeal in the plea agreement. An “unequivocal waiver of the right to appeal made pursuant to a plea bargain is valid and enforceable” so long as it is made knowingly and voluntarily. *Davis v. State*, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999).

In the plea agreement, Wright “unconditionally waiv[ed] [his] right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4).” Wright’s claim that he did not know he was waiving his right to appeal by entering his plea constitutes a challenge to the validity of his plea. *See State*

*v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000) (stating a plea is valid if “the plea was knowingly and voluntarily made and [ ] the defendant understood the nature of the offense and the consequences of the plea”). The test to determine the validity of a guilty plea “is essentially factual in nature, and thus best suited to trial court review in the first instance.” *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367 (1986), as limited by *Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Thus, unless an error clearly appears from the record, a challenge to the validity of a guilty plea must be raised in the district court in the first instance, either through a presentence motion to withdraw guilty plea or through a postconviction petition for a writ of habeas corpus. *See id.* at 272, 721 P.2d at 367-68; *Smith*, 110 Nev. at 1010-11 n.1, 879 P.2d at 61 n.1; see also *Harris v. State*, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014).

Wright did not previously challenge the validity of his plea in the district court, and the alleged errors do not clearly appear in the record. Therefore, we decline to consider this claim on appeal in the first instance. Accordingly, we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

<sup>1</sup>Because we presume a guilty plea to be valid, *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008), and because we cannot determine that the appeal waiver is invalid, we do not reach the merits of Wright’s substantive claim on appeal.

cc: Hon. Joseph Hardy, Jr., District Judge  
The Gersten Law Firm PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk