

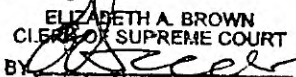
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEO LIONEL ALVAREZ,
Appellant,
vs.
TIM GARRETT, WARDEN,
Respondent.

No. 86142-COA

FILED

AUG 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Leo Lionel Alvarez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 29, 2022. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition, Alvarez contended that he did not enter his October 2021 guilty plea knowingly or voluntarily because he did not understand the sentencing consequences of his plea. In particular, Alvarez claimed that (1) he believed he was agreeing to habitual criminal treatment under NRS 207.010(1)(a), not under NRS 207.012; (2) he never received a copy of, or had an opportunity to read, the guilty plea agreement; and (3) he could not understand trial-level counsel when counsel read the plea agreement to him because counsel was behind glass and wearing a mask due to COVID-19.

“This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the

nature of the offense and the consequences of the plea.” *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). 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 the guilty plea agreement, Alvarez stipulated to adjudication as a violent habitual criminal pursuant to NRS 207.012 and to consecutive prison terms of life with the possibility of parole after 10 years on the robbery charge and 3 to 10 years on the burglary charge, which the sentencing court imposed. The plea agreement also states that counsel had “thoroughly explained” these consequences to Alvarez, counsel had answered all of Alvarez’s questions regarding the guilty plea agreement and its consequences to his satisfaction, and Alvarez was satisfied with counsel’s services.

At the evidentiary hearing on Alvarez’s petition, counsel testified that he had either given a copy of the plea agreement to Alvarez or had read the plea agreement to him verbatim and in its entirety. Counsel testified that he informed Alvarez that the plea agreement stipulated to violent habitual criminal treatment under NRS 207.012 and that he had “many, many conversations with Mr. Alvarez about the fact that he was mandatory violent habitual and the Court had no discretion but to sentence him under N.R.S. 207.012 once the State had filed its notice.” Counsel also memorialized several phone calls with Alvarez that corroborated this testimony. Counsel further testified that Alvarez sent him two or three letters after sentencing stating “what a great job [he] did” and that Alvarez

never expressed dissatisfaction with his sentence or otherwise indicated that something out of the ordinary had occurred.

The district court found counsel's testimony to be credible, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Having considered the totality of the circumstances, we conclude Alvarez did not overcome the presumption that his guilty plea was valid. Therefore, we conclude the district court did not err by denying this claim.

Alvarez also contended that the trial-level court erred when it rescinded a June 2021 guilty plea agreement that had "been accepted and finalized." This claim neither challenged the validity of Alvarez's October 2021 guilty plea nor alleged that the plea was entered without the effective assistance of counsel. This claim was thus outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus arising from a guilty plea. *See* NRS 34.810(1)(a); *Gonzales v. State*, 137 Nev. 398, 402-03, 492 P.3d 556, 561-62 (2021); *see also Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (recognizing that, by entering their plea, a defendant waives all constitutional claims "based on events occurring prior to the entry of the plea[], except those involving the voluntariness of the pleas themselves"). Therefore, we conclude the district court did not err by denying this claim.


On appeal, Alvarez contends that his sentence violated the Equal Protection Clause because the judge sentenced him pursuant to the habitual criminal statute but a different judge in another criminal case

determined he should not receive habitual criminal treatment. This claim was not raised in Alvarez's petition below; therefore, we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Leo Lionel Alvarez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk