

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY GANCI,
Appellant,
vs.
JAMES DZURENDA, WARDEN,
NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 85675-COA

FILED

NOV 14 2023

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

ORDER OF AFFIRMANCE

Gregory Ganci appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2021, and supplement filed on January 8, 2022. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Ganci argues the district court erred by denying his postsentence request to withdraw his guilty plea because his plea is invalid. Ganci claimed that his plea was not entered knowingly because, after the entry of his plea, the State filed a supplemental notice of its intent to seek punishment as a habitual criminal, which identified six additional felony convictions.

After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary “[t]o correct manifest injustice.” NRS 176.165; see *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (stating NRS 176.165 “sets forth the standard for reviewing a post-conviction claim challenging the validity of a guilty plea”). “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).

The State noticed its intent to seek habitual criminal treatment prior to entry of Ganci’s plea, the plea agreement explicitly provided that the State retained the right to argue for habitual criminal treatment, Ganci was canvassed on this issue during the entry of his plea, and Ganci never challenged the validity of the originally noticed prior convictions. Moreover, the district court conducted an evidentiary hearing regarding this claim, and Ganci testified that he knew he could be sentenced to life imprisonment as a habitual criminal.

To the extent Ganci argued that he believed the district court would not adjudicate him as a habitual criminal because the originally noticed felony convictions were nonviolent and stale, Ganci’s mere subjective belief of a lesser punishment, unsupported by indications of such by the State or the court, was insufficient to render his plea involuntary or unknowing. *See State v. Langarica*, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (holding that “mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing”); *see also Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (“NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions”); *Parkerson v. State*, 100 Nev. 222, 225, 678 P.2d 1155, 1157 (1984) (holding that a

defendant has reasonable notice when “the record . . . affirmatively show[s] that the defendant understands that an habitual criminal determination and an ensuing life sentence may be a consequence of [their] plea”). Accordingly, Ganci failed to demonstrate that his plea was not entered knowingly. Therefore, we conclude the district court did not err by denying this claim.

Ganci also argues the district court erred by denying his postsentence request to withdraw his guilty plea in which he argued that he received ineffective assistance of trial-level counsel. To demonstrate ineffective assistance of counsel, a petitioner must show counsel’s performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel’s errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 687, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district 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).

Ganci claimed that counsel was ineffective for failing to challenge the State’s supplemental habitual criminal notice or to object to the number of prior felony convictions relied on by the sentencing court. On direct appeal, Ganci argued the district court plainly erred by adjudicating him a habitual criminal. This court determined the record clearly

demonstrated that Ganci qualified as a habitual offender. *Ganci v. State*, No. 79558-COA, 2020 WL 5641111 (Nev. Ct. App. Sep. 21, 2020) (Order of Affirmance). This conclusion constitutes the law of the case, see *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975), and Ganci has not argued that this court should depart from it, see *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 728-29 (2007). Based on this, Ganci fails to demonstrate a reasonable probability of a different outcome at sentencing but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk