IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAIME SANTANA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87209-COA

FILED

JUL 15 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jaime Santana, Jr., appeals from a judgment of conviction, entered pursuant to a plea of guilty but mentally ill, of first-degree murder with the use of a deadly weapon and sexual assault resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Santana argues the district court erred in accepting his plea because he was under the influence of a prescribed medication when he entered his plea. Generally, this court will not consider a challenge to the validity of a guilty plea on direct appeal from a judgment of conviction because the test for determining whether a plea was voluntarily, knowingly, and intelligently entered "is essentially factual in nature, and thus best suited to trial court review in the first instance."[1] *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Thus, "a defendant must raise a challenge to the validity of his or her guilty plea in the district court

[1]We note that a defendant who pleads guilty but mentally ill is subject to the same criminal penalties and procedures as a defendant who pleads guilty. *See* NRS 174.035(5).

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in the first instance . . . ." *Id.* at 272, 721 P.2d at 368; *see also Smith*, 110 Nev. at 1010-11 n.1, 879 P.2d at 61 n.1 (stating that unless the error clearly appears from the record, a challenge to the validity of a guilty plea must be first raised in the district court in a motion to withdraw guilty plea or postconviction petition for a writ of habeas corpus). Santana did not previously raise a challenge to 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.[2]

Santana also argues the plea offer violated NRS 174.035(8)(a) because he was not eligible for probation. NRS 174.035(8)(a) states "[a] defendant may not enter a plea of . . . guilty but mentally ill pursuant to a plea bargain" to a felony offense for which probation is not permissible "unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, . . . and the prosecuting attorney." Here, the plea agreement was set forth in writing and signed by the required parties. Therefore, Santana fails to demonstrate that the plea offer violated NRS 174.035(8)(a), and we conclude he is not entitled to relief on this claim.

Santana also argues the State failed to prove beyond a reasonable doubt that the killing was malicious and/or premeditated and that the victim did not consent to the sexual activity. Santana entered a plea of guilty but mentally ill to first-degree murder with the use of a deadly weapon and sexual assault resulting in substantial bodily harm. In doing so, Santana admitted the facts that supported all the elements of the aforementioned crimes, including the fact that the killing was premeditated

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[2]To the extent Santana suggests the district court did not have an adequate factual basis from which it could accept his plea, we also decline to consider this claim for the reasons stated above.

and that the victim did not consent to the sexual activity. *See Figueroa-Beltran v. United States*, 136 Nev. 386, 389, 467 P.3d 615, 620 (2020) ("At a plea hearing, [the elements of crimes] are what the defendant necessarily admits when he pleads guilty." (quotation marks and internal punctuation omitted)). Thus, Santana waived this claim by entering his plea, *see Class v. United States*, 583 U.S. 174, 183 (2018) (recognizing "a valid guilty plea relinquishes any claim that would contradict the admissions necessarily made upon entry of a voluntary plea of guilty" (internal quotation marks omitted)), and we conclude he is not entitled to relief.

Santana also argues that detectives interviewed him without the presence of retained counsel and that all evidence pertaining to this interrogation should have been suppressed. Errors that arise before entry of a guilty plea are ordinarily waived by entry of the guilty plea, *see Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975), and Santana does not argue that he preserved this alleged error in the plea agreement, *see* NRS 174.035(3). Therefore, Santana waived this claim by entering his plea, and we conclude he is not entitled to relief. *See United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005) (holding a defendant waived his right to challenge the district court's ruling on a motion to suppress by entering an unconditional guilty plea).

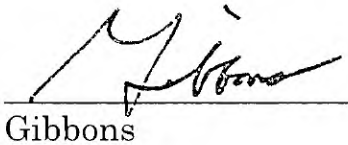
Santana also argues the district court erred by relying on an outdated report at sentencing. In his sentencing memorandum, Santana stated that the district court was "invited to review" the allegedly outdated report, and he attached the report as an exhibit to the memorandum. Thus, Santana invited any error with regard to the district court's consideration of the allegedly outdated report. *See LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014) (recognizing that "a defendant will not be heard to

complain on appeal of errors which he himself induced or provoked" (internal quotation marks omitted)). Therefore, we conclude Santana is not entitled to relief on this claim.

Finally, Santana argues that cumulative error warrants reversal of his conviction. This claim was raised for the first time in his reply brief, and we therefore decline to consider it. *See id.* at 277 n.7, 321 P.3d at 929 n.7; *see also* NRAP 28(c).

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
David E. Walters
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk