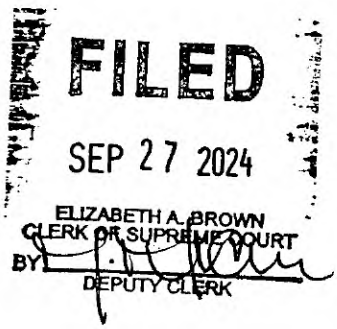
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELIZABETH CAVANAUGH,
Appellant,
vs.
THE STATE OF NEVADA; AND KEVIN MCMAHILL, CLARK COUNTY SHERIFF,
Respondents.

No. 87786-COA



ORDER OF AFFIRMANCE

Elizabeth Cavanaugh appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 7, 2023, and supplement. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Cavanaugh argues the district court erred by rejecting her claim that she did not enter her guilty plea knowingly and voluntarily. A district court may permit a petitioner to withdraw their guilty plea after sentencing 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"). "[T]his court will not overturn the district court's determination on manifest injustice absent a clear showing of an abuse of discretion." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008) (internal quotation marks omitted).

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Cavanaugh claimed her plea was not validly entered because the elements of the offense to which she pleaded—felony theft—were not adequately explained to her. In particular, Cavanaugh contended that her plea canvass was constitutionally deficient because the trial-level court merely asked if she understood all the charges contained in the indictment.

"[T]rial courts should in all circumstances conduct sufficient and thorough plea canvasses." *Bryant v. State*, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 1 P.3d 969 (2000); *see Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 537-38 (2004) ("A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently." (quotation marks omitted)). However, this court is not "constrained to look only to the technical sufficiency of a plea canvass to determine whether a plea has been entered with a true understanding of the nature of the offense charged." *Bryant*, 102 Nev. at 271, 721 P.2d at 367. Rather, "[t]his 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). "This court presumes guilty pleas to be valid, with the defendant bearing the burden to prove that the plea was not entered knowingly or voluntarily." *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008) (internal quotation marks omitted).

Cavanaugh's claim that the trial-level court merely asked if she understood all the charges contained in the indictment is belied by the record. At the plea canvass, the court asked Cavanaugh whether she had received and reviewed the amended indictment and whether she understood the charge contained therein, and Cavanaugh responded in the affirmative. The court also asked Cavanaugh whether she had an opportunity to discuss the charge with counsel and whether she was satisfied with counsel's advice and representation, and Cavanaugh again responded in the affirmative. The court also asked Cavanaugh whether she read and understood the guilty plea agreement and whether she had an opportunity to discuss the guilty plea agreement, including the charge, with counsel, to which Cavanaugh responded that she did. The court also read part of the amended indictment to Cavanaugh which recited the elements of the offense charged and the facts supporting those elements.

In the guilty plea agreement, Cavanaugh affirmed that she had discussed the elements of all of the original charges against her with counsel, she understood the nature of the charge against her, and that counsel had "thoroughly explained" the elements of the charge to her. Trial-level counsel also affirmed that Cavanaugh understood the charge and the consequences of her plea. In light of the plea canvass, Cavanaugh's discussions with counsel, and the written guilty plea agreement, Cavanaugh failed to rebut the presumption that her plea was validly entered. Therefore, we conclude the district court did not abuse its

discretion in determining that Cavanaugh failed to demonstrate withdrawal of her plea was necessary to correct a manifest injustice.[1]

Cavanaugh also argues the district court erred by denying her claim of ineffective assistance of 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*); *Gonzales v. State*, 137 Nev. 398, 404, 492 P.3d 556, 562 (2021). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. 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). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Cavanaugh claimed trial-level counsel was ineffective for failing to ask Cavanaugh whether she had a gambling problem. Cavanaugh

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[1]On appeal, Cavanaugh contends the amended indictment was deficient because it did not specify which subsection of NRS 205.0832 she was being charged with and it appeared to conflate two subsections. Cavanaugh did not raise these claims in her petition below, and we decline to consider them in the first instance. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

contended that, had counsel asked, she would have answered affirmatively, and counsel could have applied on her behalf for a gambling-addiction diversion program pursuant to NRS Chapter 458A.

Cavanaugh did not allege why objectively reasonable counsel would have inquired about a gambling problem in this matter,[2] nor did she cite any authority holding counsel must inquire into whether a defendant has a gambling problem in all cases.[3] Instead, Cavanaugh merely stated that counsel's failure "to determine if she qualified for the gambler diversion program was deficient and fell below an objective standard of reasonableness" and that counsel "was deficient because had he inquired if

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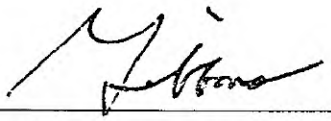
[2]To the extent Cavanaugh attempts to support this claim on appeal by adding specific facts about counsel's alleged deficiency, we decline to consider these facts for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999); *see also* NRS 34.735 (providing that a petitioner "allege specific facts supporting the [postconviction habeas] claim in [the] petition").

[3]Cavanaugh relies upon the supreme court's order in *State v. Meador*, No. 70594, 2017 WL 1944311 (Nev. May 9, 2017) (Order of Affirmance). *Meador* did not conclude that counsel must inquire into whether a defendant has a gambling problem in all cases. Rather, the supreme court affirmed the district court's determination that counsel was ineffective for failing to seek diversion under NRS Chapter 458A where counsel was aware the defendant had a gambling problem and had committed her crimes in furtherance of her gambling problem but erroneously believed he could not request diversion. *Id.* at *1. Cavanaugh did not allege in her petition that counsel knew she had a gambling problem or that she committed the offense in furtherance of her gambling problem. Thus, *Meador* is distinguishable from the instant matter.

[Cavanaugh] has a gambling addition, . . . he would have applied her for the gamblers' diversion court."

To overcome the presumption that counsel performed effectively, "a petitioner must do more than baldly assert that [her] attorney could have, or should have, acted differently. Instead, [she] must *specifically explain* how [her] attorney's performance was objectively unreasonable." *Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (internal citation and quotation marks omitted). Cavanaugh's bare claim failed to allege specific facts indicating counsel was deficient. Accordingly, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.[4]



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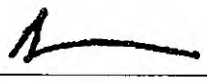

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Bulla

_____, J.
Westbrook

[4]In light of our disposition, we need not consider Cavanaugh's claim that the district court erred in determining she would not be eligible for diversion under NRS Chapter 458A.

cc: Hon. Crystal Eller, District Judge
The Pariente Law Firm, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk