

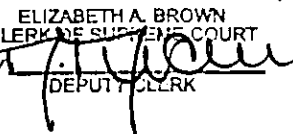
IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIVION DEVONTE MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88650

FILED

JAN 15 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Appellant Daivion Moore pleaded guilty to first-degree murder with the use of a deadly weapon. Moore filed a postconviction habeas petition and was appointed counsel to assist with the petition. The district court held an evidentiary hearing on the petition but ultimately denied it. Moore appeals, arguing the district court erred in denying claims that counsel provided ineffective assistance and that the guilty plea was not knowingly or voluntarily entered. We affirm.

Moore raises four ineffective-assistance claims. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate counsel's performance (1) was deficient, in that it fell below an objective standard of reasonableness, and (2) resulted in prejudice, such that there is a reasonable probability that but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v.*

Lockhart, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous, but we 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).

First, Moore argues that trial counsel poorly advised Moore about withdrawing the guilty plea. Moore offered only his own testimony as evidence that he sought to withdraw the guilty plea before sentencing. Trial counsel, however, did not recall Moore requesting to withdraw the guilty plea. And trial counsel testified that generally counsel would advise a client that a withdrawal would be difficult to obtain, which was not legally incorrect. Therefore, Moore failed to demonstrate deficient performance or prejudice. Accordingly, the district court did not err in denying this claim.

Second, Moore argues that trial counsel failed to adequately explain felony murder. Moore did not identify how further information about felony murder would have resulted in a reasonable probability of Moore deciding not to plead guilty and instead proceed to trial. Thus, Moore failed to demonstrate deficient performance or prejudice, and the district court did not err in denying this claim.

Third, Moore argues that trial counsel failed to obtain a competency evaluation. A defendant is competent if the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and the defendant "has a rational as well as factual understanding of the proceedings against him." *Calvin v. State*, 122 Nev. 1178, 1182, 147 P.3d 1097, 1100 (2006) (internal quotation marks

omitted). Trial counsel testified that because of Moore's low IQ, trial counsel was especially aware of Moore's competency but never doubted Moore was competent. The district court canvassed Moore and, like counsel, did not appear to have any concerns with Moore's competency. Further, Moore provided no evidence that he was or might have been incompetent when he pleaded guilty. Thus, Moore failed to demonstrate deficient performance or prejudice, and the district court did not err in denying this claim.

Fourth, Moore argues that trial counsel failed to investigate Moore's mental health and whether it could be used as a defense. A defendant who contends their attorney was ineffective because the attorney did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Moore failed to demonstrate that an investigation into his mental health would have provided a more effective defense. Trial counsel requested and received Moore's mental health records and retained an expert to examine Moore and write a report regarding Moore's mental health. At the postconviction evidentiary hearing, Moore admitted he intended to rob the victim and used a gun to do so, which discharged and killed the victim. Moore did not identify how further investigation into his mental health would have provided a successful defense, especially considering Moore's testimony. As such, he did not demonstrate deficient performance or prejudice. Thus, the district court properly concluded Moore failed to establish trial counsel was ineffective.

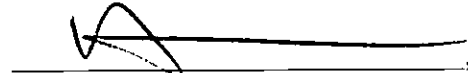
Lastly, Moore asserts that he did not knowingly and voluntarily plead guilty. A district court may permit a petitioner to withdraw their

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”). A guilty plea is presumptively valid, and the 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). “This court will not invalidate a plea so 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).

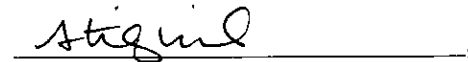
At the plea canvass, Moore acknowledged he read and signed the plea agreement and he understood the rights he was waiving and the penalties he faced. Although the court made two corrections to the guilty plea agreement through interlineation, those corrections were explained to Moore, who stated he understood and agreed to the changes. “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.” *Molina*, 120 Nev. at 191, 87 P.3d at 537-38 (internal quotation marks omitted). To the extent Moore suggests he could not understand the agreement or the interlineations to it due to his mental health and low IQ, Moore failed to provide evidence in support of these assertions. And trial counsel testified that Moore’s mental health issues were not severe enough to create an issue. Thus, Moore failed to establish the guilty plea was not entered knowingly and voluntarily.

Having considered Moore's contentions and concluding they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Jacqueline M. Bluth, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk