

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ANTHONY GONZALEZ,
Appellant,
vs.
DANIEL COVERLEY, DOUGLAS
COUNTY SHERIFF, AND THE STATE
OF NEVADA,
Respondents.

No. 90936-COA

FILED

FEB 27 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mark Anthony Gonzalez appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on August 2, 2024. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Gonzalez was convicted, pursuant to a guilty plea, of two counts of residential burglary, for which he received consecutive sentences of 4 to 10 years in prison. In the instant petition, Gonzalez claimed he did not enter his guilty plea knowingly, voluntarily, and intelligently. The district court determined that Gonzalez's claims were belied by the record or did not warrant relief and dismissed the petition.

On appeal, Gonzalez argues the district court erred in dismissing his claims that he did not knowingly, voluntarily, and intelligently enter his guilty plea. NRS 176.165 sets forth the standard for reviewing a postconviction claim challenging the validity of a guilty plea. *See Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014). Pursuant to NRS 176.165, a district court may permit a petitioner to withdraw their plea after sentencing where necessary "[t]o correct manifest injustice." 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). “[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).

In his petition, Gonzalez first claimed his guilty plea was not knowingly, voluntarily, and intelligently entered because there was a material conflict between the plea canvass and the guilty plea agreement regarding his appellate rights. In particular, Gonzalez claimed that he was told during the plea canvass his appellate rights would be “greatly reduce[d]” by entering a guilty plea but that the plea agreement stated he had no right to appeal his conviction or sentence.

Although Gonzalez identified a potential conflict between the guilty plea agreement and his plea canvass regarding his appellate rights,¹ Gonzalez did not allege that he misunderstood his appellate rights or that counsel failed to explain his appellate rights. Therefore, he failed to allege

¹In the guilty plea agreement, Gonzalez waived his “right to appeal any matter in connection with his prosecution, conviction, or sentence.” We note an unequivocal waiver of the right to appeal is generally enforceable unless denying the right would work a miscarriage of justice. *See Burns v. State*, 137 Nev. 494, 499-500, 495 P.3d 1091, 1099-100 (2021); *Davis v. State*, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999).

how the purported conflict affected his understanding of his appellate rights. Moreover, the trial-level court informed Gonzalez that his guilty plea would limit the number of issues he could raise on appeal, and Gonzalez subsequently filed a direct appeal. *See Gonzalez v. State*, No. 88655-COA, 2025 WL 644674 (Nev. Ct. App. Feb. 25, 2025) (Order of Affirmance).² Thus, even assuming there was a conflict between the plea canvass and the guilty plea agreement, Gonzalez failed to overcome the presumption that his plea was knowingly, voluntarily, or intelligently entered, and we conclude the district court did not abuse its discretion in determining Gonzalez failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice.

Second, Gonzalez claimed his guilty plea was not knowingly, voluntarily, and intelligently entered because he was “unaware of the 40% minimum mandatory sentence.” In particular, he claimed that he “did not understand the full range of possible punishment,” that he did not know “the minimum mandatory sentence can be up to 40% of the maximum sentence,” that he “was led to believe that he could receive a minimum of one-year incarceration for each offense,” and that “NRS 193.130(1) took away this possibility.”

The record indicates Gonzalez was informed of, and understood, the full range of possible punishment. In the guilty plea agreement and in the plea canvass, Gonzalez affirmed that he understood he could be sentenced to prison for a minimum term of not less than 1 year and a

²Although this court declined to consider the merits of Gonzalez’s claims on appeal, it did so because Gonzalez’s claims challenged the validity of his guilty plea and were not raised before the district court in the first instance, not because Gonzalez waived his right to a direct appeal. *Id.* at *1.

maximum term of not more than 10 years for each count of residential burglary. He further affirmed that he understood the court had discretion in its sentencing decision, including whether to impose consecutive or concurrent sentences. Thus, Gonzalez failed to overcome the presumption that his plea was knowingly, voluntarily, or intelligently entered. *Banka v. State*, 136 Nev. 685, 688, 476 P.3d 1191, 1193 (2020) (“Where there is a range of punishments—by fine or by imprisonment—the defendant must be informed of both the floor and ceiling of that range in order to make a knowing and voluntary decision.”).

Contrary to Gonzalez’s assertion, NRS 193.130(1) did not “take away” his ability to receive one-year terms as his minimum terms of imprisonment, nor does it establish a “minimum mandatory sentence.” Rather, the challenged provision simply prohibited the sentencing court from imposing a minimum term of imprisonment in excess of 40% of the maximum term imposed. *See* NRS 193.130(1). Significantly, it does not *require* the sentencing court to impose a minimum term of imprisonment equal to 40% of the maximum term imposed.³ To the extent Gonzalez contended he was unaware the sentencing court’s discretion in imposing his minimum terms of imprisonment was limited in this manner, we conclude the district court did not abuse its discretion in determining that he failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice.

³For this reason, *Banka* is not analogous to the present matter. *See Banka*, 136 Nev. at 686-88, 476 P.3d at 1192-93 (holding the district court abused its discretion in denying a presentence motion to withdraw guilty plea where the defendant was not informed of the mandatory minimum statutory fine).

In light of the foregoing,⁴ we conclude the district court did not err by dismissing Gonzalez's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Thomas W. Gregory, District Judge
The Pariente Law Firm, P.C.
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

⁴On appeal, Gonzalez argues the State breached the plea agreement by raising certain arguments at sentencing. Gonzalez did not raise this claim in his petition below, and we decline to consider it for the first time on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 32-33 (2004).