

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN EDWARD PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80862-COA

FILED

FEB 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin Edward Porter appeals from a judgment of conviction entered pursuant to a guilty plea of battery with use of a deadly weapon. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Porter challenges the validity of his guilty plea on the grounds that his counsel rendered ineffective assistance. Unless error clearly appears from the record, a challenge to the validity of a guilty plea must be raised in the district court in a motion to withdraw guilty plea or a postconviction petition for a writ of habeas corpus. *Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Porter failed to challenge the validity of his guilty plea below. And, as Porter concedes, there is no information in the record to explain counsel's allegedly deficient actions. Because error does not clearly appear from the record, *see Strickland v. Washington*, 466 U.S. 668, 690 (1984) (holding that counsel is presumed not to have been deficient), we will not consider Porter's challenge to the

validity of his guilty plea in the first instance on direct appeal. Accordingly,
we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Thomas L. Stockard, District Judge
Evenson Law Office
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk