

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRY WILLIAM DEMPSEY,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN,  
Respondent.

No. 81754-COA

**FILED**

**JUN 17 2021**

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

*ORDER OF AFFIRMANCE*

Henry William Dempsey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 24, 2015, and supplemental pleading filed on April 12, 2017. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Dempsey contends the district court erred by denying his claim that he was incompetent and thus did not enter a knowing, voluntary, and intelligent guilty plea. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the


totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

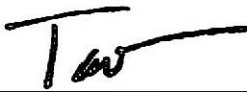
The district court conducted an evidentiary hearing on this petition and found that two competency evaluations for Dempsey were conducted prior to entry of the plea and that both competency evaluations determined that Dempsey was competent. The district court further found that Dempsey's expert witness in postconviction, a forensic psychiatrist, testified that the two psychologists who evaluated Dempsey's competency were qualified to conduct their evaluations and in a better position to assess his competency during the relevant time period. Finally, the district court found trial-level counsel to be credible, and trial-level counsel testified that Dempsey appeared to understand the consequences of the plea negotiations. The district court's findings are supported by the record. After considering the totality of the circumstances, we conclude Dempsey failed to overcome the presumption that his guilty plea was entered into knowingly, voluntarily, and intelligently. We therefore conclude the district court did not abuse its discretion by denying this claim.

Dempsey also argues that counsel was ineffective for failing to investigate Dempsey's "mental capacity as to whether he had the ability to knowingly, intelligently, and voluntarily enter his guilty plea." This is new argument not properly raised below, *see Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006) (requiring, among other things, that the district court make a finding on the record that petitioner had good cause to raise new claims at an evidentiary hearing), and we decline to

consider this issue on appeal in the first instance, *see McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Connie J. Steinheimer, District Judge  
Oldenburg Law Office  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk