

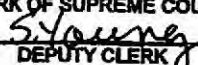
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS DAVID DOWNS,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; SOUTHERN DESERT
CORRECTIONAL CENTER; AND
WILLIAM HUTCHINGS, WARDEN,
Respondents.

No. 83499-COA

FILED

MAR 07 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Thomas David Downs appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 3, 2021, and related pleadings.¹ Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Downs claims the district court erred by denying his claims challenging the validity of his guilty plea. After sentencing, a district court

¹Downs filed a motion to withdraw his guilty plea on the same day. The district court correctly construed the motion as a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014).

Although the initial pleadings were untimely filed, the district court found they were received by the clerk of the court prior to the one-year timely filing deadline. This finding is supported by the record. Accordingly, we conclude the district court properly concluded that good cause excused the procedural time bar. *See NRS 34.726* (providing petitioners one year to file for postconviction relief absent a demonstration of good cause); *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (providing good cause requires an impediment external to the defense).

may permit a petitioner to withdraw his guilty plea where necessary “to correct a manifest injustice.” NRS 176.165. “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted). A guilty plea is presumptively valid, and a 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). 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). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Downs claimed he did not enter his guilty plea knowingly and voluntarily due to his impaired mental health and lack of proper medication. Downs claimed his impaired mental health prevented him from understanding the charging document, the guilty plea agreement, and the consequences of his plea. Downs failed to identify any facts that demonstrated he lacked “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [or] a rational as well as factual understanding of the proceedings against him.” *See Melchor-Gloria v. State*, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)) (setting forth the test for competency). Therefore, Downs failed to demonstrate his plea was not entered knowingly

and voluntarily, and we conclude the district court did not err by denying this claim.

Downs also claimed he did not enter his guilty plea knowingly and voluntarily due to the ineffective assistance of counsel. To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 687 (1984). We give deference to the 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).

Downs claimed counsel was ineffective for failing to file a motion addressing the medication issue prior to the entry of his plea. Downs claimed counsel should have insisted on a competency evaluation or otherwise objected to the proceeding until the medication issue was resolved. During the plea canvass, counsel informed the court she had met with Downs and asserted that he was able to get through the proceeding despite his lack of medication. Downs expressed his desire to proceed with the plea despite his lack of medication and asserted that he understood the charging document, the guilty plea agreement, and the consequences of his plea. Moreover, Downs failed to allege specific facts that would have caused counsel to question his competency or what the results of any such


evaluation would have been. Accordingly, Downs failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel filed the motion prior to the entry of his plea. Therefore, we conclude the district court did not err by denying this claim.

Downs also claimed counsel was ineffective for erroneously advising him he could not appeal because he took a plea bargain and for failing to challenge his sentence on direct appeal. Downs waived his right to appeal in his guilty plea agreement. Moreover, Downs received a sentence consistent with the range of punishment he bargained for and did not seek presentence relief from his plea. Therefore, Downs failed to demonstrate counsel's actions were objectively unreasonable. *See Burns v. State*, 137 Nev., Adv. Op. 50, 495 P.3d 1091, 1100 (2021) (providing a defendant may prospectively waive the right to appellate review); *Toston v. State*, 127 Nev. 971, 979-80, 267 P.3d 795, 801 (2011) (providing circumstances where counsel may infer a client's desire to appeal in case where client pleaded guilty). Therefore, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk