


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCOS RAMOS HERNANDEZ,
Appellant,
vs.
WARDEN HIGH DESERT STATE
PRISON; AND THE STATE OF
NEVADA,
Respondents.

No. 89085-COA

FILED

JUN 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marcos Ramos Hernandez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 15, 2022, and a supplement filed on September 8, 2023. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

On appeal, Hernandez argues the district court erred by denying his claim that he should be entitled to withdraw his plea because it was not knowingly and voluntarily entered.¹ 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”). “The district court may grant a post-conviction motion to

¹We note Hernandez entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), which is the equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

withdraw a guilty plea that was not entered knowingly and voluntarily in order to correct a manifest injustice.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). “[T]his court will not overturn the district court’s determination on manifest injustice absent a clear showing of an abuse of discretion.” *Id.* at 1039, 194 P.3d at 1229 (internal quotation marks omitted).

First, Hernandez contends his plea was not knowingly and voluntarily entered because he has low literacy and understood little of what was going on in court proceedings related to the entry of his plea. “[T]rial courts should in all circumstances conduct sufficient and thorough plea canvasses.” *Bryant v. State*, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 1 P.3d 969 (2000); *see Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 537-38 (2004) (“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.” (quotation marks omitted)). However, this court is not “constrained to look only to the technical sufficiency of a plea canvass to determine whether a plea has been entered with a true understanding of the nature of the offense charged.” *Bryant*, 102 Nev. at 271, 721 P.2d at 367. Rather, “[t]his court will not invalidate a plea as 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). “This court presumes guilty pleas to be valid, with the defendant bearing the burden to prove that the plea was not entered knowingly or


voluntarily.” *Rubio*, 124 Nev. at 1038, 194 P.3d at 1228 (2008) (internal quotation marks omitted).

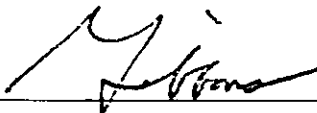
The district court found that, despite informing the court that he had a sixth-grade education, Hernandez “repeatedly affirmed that he understood what was happening” regarding the entry of his plea during the plea canvass. This finding is supported by the record. Further, during an evidentiary hearing conducted on his petition, Hernandez testified that counsel told him to say “yes” to everything the judge said. The district court implicitly found this testimony to not be credible. We defer to the district court’s credibility determinations. *See Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (“This court will not . . . evaluate the credibility of witnesses because that is the responsibility of the trier of fact.”). Hernandez offered no explanation about what he did not understand while in court and offered no evidence related to his literacy. Therefore, we conclude Hernandez is not entitled to relief based on this claim.


Second, Hernandez contends his plea was not knowingly and voluntarily entered because he had misunderstandings regarding what counsel told him. Specifically, Hernandez believed he was going to be able to move to California because counsel promised him probation. At the hearing on his petition, Hernandez testified that counsel told him he would be getting probation. The district court implicitly found this testimony was not credible. In addition, the district court implicitly found credible counsel’s testimony that she did not promise Hernandez he was going to get probation and instead explained to him, with the aid of an interpreter, the terms of the plea agreement and that the plea negotiations allowed Hernandez only to argue for probation.

In light of these circumstances, Hernandez failed to rebut the presumption that his plea was validly entered. Therefore, we conclude the district court did not abuse its discretion in determining that Hernandez failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Wright Marsh & Levy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk