

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO TAMAYO LOPEZ,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
MICHAEL BUDGE,
Respondent.

No. 42892

FILED

AUG 18 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On October 3, 2001, appellant Roberto Tamayo Lopez was convicted, pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance. The district court sentenced Lopez to serve a prison term of 10 to 25 years. Lopez did not file a direct appeal.

On May 30, 2002, Lopez filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition, and the district court appointed counsel to represent Lopez. After conducting an evidentiary hearing, the district court denied the petition. Lopez filed the instant appeal.

In the petition, Lopez raised several claims of ineffective assistance of counsel. In order to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell

below an objective standard of reasonableness.¹ Also, a petitioner must demonstrate “a reasonable probability that, but for counsel's errors, [the petitioner] would not have pleaded guilty and would have insisted on going to trial.”²

Lopez first contends that his trial counsel was ineffective in failing to provide a Spanish-language interpreter at the proceedings where Lopez waived his right to a preliminary hearing and entered his guilty plea. The district court found that trial counsel was not ineffective because Lopez had a “complete understanding of the plea agreement.” We conclude that the district court's findings are supported by substantial evidence.³

In particular, at the post-conviction hearing, Spanish-language interpreter Guy Farmer testified that he translated the plea agreement for Lopez and was present at the plea canvass when Lopez entered his guilty plea. Farmer explained that he did not actively translate at the plea canvass, but instead acted as a standby interpreter because Lopez told him that he would prefer to respond in English. Additionally, trial counsel Karla Butko testified that she met with Lopez for over an hour to discuss the facts of his case and that he spoke perfect English and had lived in the United States for the past 13 years. Butko explained that, thereafter, she hired Spanish-language interpreters who

¹Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

²Hill, 474 U.S. at 59.

³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

translated the proceedings involving the waiver of the preliminary hearing and the plea negotiations, including the language of the plea agreement because Lopez's brother had informed her that Lopez did not speak enough English to understand her.

Although at the post-conviction hearing Lopez testified that he did not understand the proceedings, the transcript of the plea canvass indicates that Lopez was able to appropriately respond to the district court's question. In entering his guilty plea, Lopez informed the district court in English that he understood the plea canvass proceedings and was pleading guilty to "tak[e] responsibility for his actions." Lopez also described in English the circumstances surrounding the crime, namely, that he was arrested "at work" and that the police had "used [his partner] at work" as the informant. Accordingly, we conclude that the district court did not err in rejecting Lopez's claim because there is substantial evidence supporting its finding that Butko acted reasonably to ensure that Lopez understood the consequences of his guilty plea.

Lopez next contends that his trial counsel was ineffective in failing to prepare the case for trial. Specifically, Lopez contends that trial counsel failed to employ an investigator, listen to the audiotapes of the controlled buys, determine if there was a videotape of the proceedings, and test the controlled substances seized at Lopez's home. The district court found that trial counsel was not ineffective because she conducted a sufficient investigation and, even assuming she did not, Lopez suffered no

prejudice. We conclude that the district court's findings are supported by substantial evidence.⁴

In particular, at the post-conviction hearing, Butko testified that she spent approximately 40 to 50 hours on Lopez's case. Butko also testified that she recommended a plea bargain because the case was difficult to defend since: (1) Lopez admitted that he engaged in two drug sales, which involved the same informant and were tape recorded by police; and (2) in a subsequent search of Lopez's home conducted pursuant to a warrant, the police seized the buy-money from the two prior drug sales, as well as 10 ounces of cocaine and 20 pounds of marijuana. Butko explained that she considered alternatives to a plea bargain, including a procuring agent defense and attacking the validity of the search warrant, but determined that there was insufficient evidence to prevail on those grounds. Butko testified that, ultimately, she recommended that Lopez plead guilty to a single top-level trafficking count⁵ in order to avoid exposure to consecutive sentences and reduce the possibility of federal weapons and drug charges. Notably, Lopez presented no evidence that further investigation would have uncovered exculpatory evidence or resulted in the suppression of evidence seized under the search warrant. Accordingly, we conclude that the district court did not err in rejecting


⁴Id.

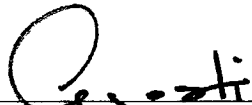
⁵Lopez was originally charged with multiple trafficking counts, including two level-three trafficking counts, one level-two trafficking count, and one possession for sale count.

Lopez's claim because there is substantial evidence supporting its finding that Butko conducted a reasonable investigation.

Having considered Lopez's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michael R. Griffin, District Judge
Crowell Susich Owen & Tackes
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk