

IN THE SUPREME COURT OF THE STATE OF NEVADA

IGNACIO RUELAS RAMIREZ,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
MICHAEL BUDGE,
Respondent.

No. 43349

FILED

JUL 26 2005

ORDER OF AFFIRMANCE

JANETTE M. SUGOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Ignacio Ruelas Ramirez's post-conviction petition for a writ of habeas corpus.

On June 5, 2002, the district court convicted Ramirez, pursuant to a guilty plea, of first-degree murder. The district court sentenced Ramirez to serve a life term in the Nevada State Prison with the possibility of parole. No appeal was taken.

On May 19, 2003, Ramirez filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent Ramirez and conducted an evidentiary hearing. Subsequently, on May 17, 2004, the district court denied Ramirez's petition. This appeal followed.¹

¹We note that Ramirez is represented by counsel in this appeal.

In his opening brief, Ramirez contends that his counsel was ineffective for several reasons. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, Ramirez "must demonstrate that his counsel's performance fell below an objective standard of reasonableness."² Further, Ramirez must demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.³

First, Ramirez argues that his counsel was ineffective for waiving the preliminary hearing. The record indicates that counsel initially waived the preliminary hearing in order to secure a competency evaluation for Ramirez. If the district court had determined that Ramirez was competent to stand trial, he would have had the right to a preliminary hearing. However, Ramirez subsequently elected to accept a plea agreement, which was contingent upon him waiving the preliminary hearing. Moreover, because Ramirez entered a guilty plea, he may not now be heard to complain of events preceding his plea.⁴ "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise

²See Hill v. Lockhart, 474 U.S. 52, 57 (1985) (citing Strickland v. Washington, 466 U.S. 668, 697-88 (1984)).

³See Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill, 474 U.S. at 59).

⁴See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."⁵ Accordingly, we conclude that the district court did not err in rejecting this claim.

Second, Ramirez claims that his counsel was ineffective for failing to produce any mitigating evidence at sentencing. Ramirez' counsel testified during the post-conviction evidentiary hearing that based upon the district court's inclination to sentence Ramirez to a life term with the possibility of parole, he did not believe that introducing mitigating evidence would have been helpful. Ramirez neglected to identify what mitigating evidence he desired his counsel to introduce at sentencing.⁶ As Ramirez failed to substantiate his claim below, we conclude that the district court did not err in rejecting this claim.

Third, Ramirez claims that his counsel was ineffective for failing to pursue an insanity defense. During the evidentiary hearing, Ramirez's counsel explained that had the case proceeded to trial he would have pursued an insanity defense. Counsel further testified that he advised Ramirez of his concerns regarding the plausibility of an insanity defense in light of the State's evidence against Ramirez. Ramirez then elected to accept the plea agreement and plead guilty to first-degree murder. Under these circumstances, we conclude that the district court did not err in rejecting this claim.

⁵Tollett v. Henderson, 411 U.S. 258, 267 (1973).

⁶See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Finally, Ramirez asserts that his counsel was ineffective for stipulating to a competency examination; for allowing him to enter an unknowing and involuntary plea; for failing to preserve issues for appeal; and for failing to file an appeal. Ramirez also claimed that his counsel "made no effort on his behalf." However, these claims are not supported by any specific factual allegations.⁷ Accordingly, we conclude that the district court did not err in rejecting them.

Ramirez also claims that his plea was involuntary. A guilty plea is presumptively valid, and Ramirez carries the burden of establishing that the plea was not entered knowingly and intelligently.⁸ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁹ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.¹⁰

First, Ramirez argues that his guilty plea was involuntary because he was incompetent to enter it. The district court's findings following a competency hearing will not be disturbed on appeal if they are

⁷See id.

⁸See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

⁹See State v. Freese, 116 Nev. 1097, 1104, 13 P.3d 442, 447 (2000).

¹⁰See Hubbard, 110 Nev. at 675, 877 P.2d at 521.

supported by substantial evidence.¹¹ "The test to be applied in determining competency is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational and factual understanding of the proceedings against him."¹²

The district court conducted a competency hearing and considered the evaluations conducted at Lake's Crossing as well as arguments by counsel. Based on these submissions, the district court found that Ramirez understood the nature of the charges against him and that he was able to assist in his defense. The record supports the district court's findings, and we conclude that the district court did not clearly abuse its discretion in rejecting Ramirez's claim that the plea was involuntary based on his alleged incompetence.

Second, Ramirez contends that his plea was unknowing because he was not advised by counsel or the district court that the district court had the option of sentencing him to serve a definite term of 50 years with the possibility of parole after 20 years.¹³ An element in determining whether a guilty plea is voluntary "is whether the defendant had an adequate appreciation of the possible sentence that can be

¹¹See Ogden v. State, 96 Nev. 697, 698, 615 P.2d 251, 252 (1980).

¹²Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991).

¹³See NRS 200.030(4)(b)(3).

imposed."¹⁴ When a defendant has been provided incorrect or insufficient sentencing information, "the proper test to be applied is whether the defendant would have pleaded differently had he been correctly informed, upon which issue the state must bear the burden of proof."¹⁵

Here, Ramirez received a substantial benefit by pleading guilty. Had he proceeded to trial, Ramirez faced two consecutive life terms without the possibility of parole. Moreover, at the sentencing hearing, Ramirez acknowledged that he had reviewed the pre-sentence report, which advised him that a possible sentence was a specific term of 50 years with the possibility of parole after 20 years. Ramirez made no attempt to withdraw his plea at that time. Finally, whereas Ramirez's agreement to plead guilty was based in part on the possibility of parole after 20 years, we are not persuaded that he would have rejected the plea agreement had he been more fully advised that the district court also had the option of sentencing him to a specific term of 50 years with the possibility of parole after 20 years, as well as to a term of life with the possibility of parole after 20 years. Both potential sentences contain the same parole eligibility term, requiring Ramirez to serve a minimum 20-year term. Based on the particular facts of this case, we conclude that the


¹⁴See Taylor v. Warden, 96 Nev. 272, 275, 607 P.2d 587, 589 (1980), overruled on other grounds by David v. Warden, 99 Nev. 799, 801 n.2, 671 P.2d 634, 635 n.2 (1983); see also Sierra v. State, 100 Nev. 614, 691 P.2d 431 (1984).

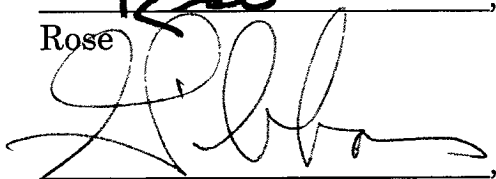
¹⁵Taylor, 96 Nev. at 275, 607 P.2d at 589.

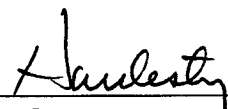
district court did not err in rejecting his claim that his guilty plea was involuntary or unknowing because he was not fully advised of all the available sentencing options.

Having reviewed the record on appeal, and Ramirez's assignments of error, we conclude that the district court did not err in denying his post-conviction petition for a writ of habeas corpus, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. J. Michael Memeo, District Judge
Matthew J. Stermitz
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk