

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS RUIZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43789

FILED

JAN 31 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Juan Carlos Ruiz's post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Humboldt County; John M. Iroz, Judge.

On January 21, 2003, Ruiz was convicted, pursuant to a no contest plea, of one count each of level-three trafficking in a controlled substance and sale of a controlled substance within 1,000 feet of the perimeter of a playground. The district court sentenced Ruiz to serve a prison term of 10-25 years for the trafficking count and a concurrent prison term of 1-3 years with an equal and consecutive prison term for the sale of a controlled substance count. Ruiz did not pursue a direct appeal from the judgment of conviction and sentence.

On December 24, 2003, Ruiz filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Ruiz, and counsel filed a supplement to the petition. The State opposed the petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing,

and on August 2, 2004, entered an order denying Ruiz's petition. This timely appeal followed.

Ruiz contends that he received ineffective assistance of counsel. The right to the effective assistance of counsel applies "when deciding whether to accept or reject a plea bargain."<sup>1</sup> To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a no contest plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that: (1) counsel's errors were so severe that there was a reasonable probability that the outcome would have been different,<sup>2</sup> or (2) but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>3</sup> A district court's factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.<sup>4</sup>

Ruiz contends that the district court erred in not finding that counsel was ineffective for failing to file a motion for a sentence reduction based on substantial assistance.<sup>5</sup> As part of the written plea agreement, if

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<sup>1</sup>See Larson v. State, 104 Nev. 691, 693 n.6, 766 P.2d 261, 262 n.6 (1988) (citing McMann v. Richardson, 397 U.S. 759 (1970)).

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>3</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>4</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>5</sup>NRS 453.3405(2) provides that the district court may reduce or suspend the sentence of any person convicted of trafficking in a controlled  
*continued on next page . . .*

Ruiz filed a motion to suspend or reduce his sentence pursuant to NRS 453.3405, the State reserved “the absolute right to withdraw from this Agreement and . . . proceed against [Ruiz] upon the original charge or charges pending.”<sup>6</sup>

In its order denying Ruiz’s petition, the district court stated that “had defense counsel made a motion at sentencing . . . to reduce or suspend Petitioner’s sentence, it would have been a deliberate repudiation of the plea agreement rendering it null and void.” The district court also noted that it was unlikely that such a motion would have been successful considering the evidence that Ruiz had not complied with the cooperating agreement to provide assistance. Furthermore, Ruiz fled from the jurisdiction and absconded when he was supposed to be providing assistance to law enforcement personnel, and as a result, faced an additional felony failure to appear charge. Therefore, we conclude that the district court did not err in finding that counsel was not ineffective for failing to file a motion to suspend or reduce his sentence.

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*. . . continued*

substance “if [it] finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any . . . person involved in trafficking in a controlled substance.”

<sup>6</sup>A third amended criminal information charged Ruiz with one count of sale of a controlled substance within 1,000 feet of the perimeter of a playground, one count of level-two trafficking in a controlled substance, two counts of level-three trafficking in a controlled substance, and one count of possession of a controlled substance. Additionally, in exchange for his plea, the State agreed not to charge Ruiz with failure to appear after he absconded from the jurisdiction, another felony.

To the extent that Ruiz argues that the State waived the provision in the plea agreement precluding his filing of a motion pursuant to NRS 453.3405, we conclude that this argument is without merit. We note that one of the instances that Ruiz characterizes as a waiver was a comment made by the prosecutor more than two years before a plea agreement was reached, during a hearing on the State's motion to increase Ruiz's bail. At that hearing, the State informed the district court that, previously, the parties stipulated to a reduction in bail "for the strict purpose of Mr. Ruiz being able to get out of jail . . . to be signed up as a cooperating individual . . . with the Nevada Division of Investigations." The prosecutor also informed the district court that Ruiz "was nowhere near in fulfilling that agreement." The second instance that Ruiz characterizes as a waiver occurred during his sentencing hearing when the prosecutor informed the district court that Ruiz "attempted" to provide assistance to law enforcement personnel, but "did not follow through." We are not persuaded by Ruiz's argument, and he has not provided this court with any authority for the proposition that the two comments amounted to a waiver of the provision in the plea agreement.

Ruiz also contends that his no contest plea was invalid because the provision that the State could withdraw from the agreement if Ruiz filed a motion to suspend or reduce his sentence amounted to an "adhesion contract." Further, Ruiz argues that he was not adequately canvassed regarding the provision. Ruiz, however, has not cited to any persuasive authority for the proposition that the challenged provision in his plea agreement amounts to what he terms an "adhesion contract." Additionally, the record reveals that Ruiz was adequately canvassed by

the district court at the entry of his plea, and that he understood the rights he was waiving, the consequence of his plea, and the elements of the offense. Therefore, we conclude that the district court did not err in finding that Ruiz's plea was validly entered.<sup>7</sup>

Ruiz contends that the district court erred in not finding that counsel was ineffective for failing to present mitigating evidence at sentencing. More specifically, Ruiz argues that counsel should have presented an "expert witness drug evaluation," in connection with a motion for a sentence reduction under NRS 453.3405, in order to reduce his level-three trafficking sentence. We disagree with Ruiz's contention.

As the district court stated in its order denying Ruiz's petition, Ruiz received the minimum sentence for a level-three trafficking conviction, and therefore, "whether or not defense counsel presented the results of [a] substance abuse evaluation at the time of sentencing would have had no effect on the sentence received by Petitioner." Accordingly, we conclude that counsel was not ineffective for failing to present mitigating evidence at sentencing.

Finally, Ruiz contends that the district court erred by not conducting an evidentiary hearing: (1) to determine whether he was entrapped by law enforcement personnel; and (2) on his claims of ineffective assistance of counsel. Initially, we note that Ruiz waived the issue of his alleged entrapment by pleading no contest. This court has stated that, generally, the entry of a plea waives any right to appeal from

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<sup>7</sup>See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

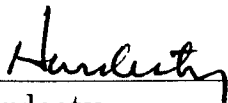
events occurring prior to the entry of the plea.<sup>8</sup> “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”<sup>9</sup> Further, the record clearly does not support Ruiz’s allegations of ineffective assistance of counsel, and therefore, he was not entitled to an evidentiary hearing on those claims.<sup>10</sup>

Having considered Ruiz’s contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Becker

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Hardesty

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<sup>8</sup>See Webb, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

<sup>9</sup>Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)); see also Lyons, 100 Nev. at 432, 683 P.2d at 505 (no contest pleas waived constitutional claims based on events occurring before entry of the pleas).

<sup>10</sup>Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996) (petitioner “not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record”), limited in part on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

cc: Hon. John M. Iroz, District Judge  
Mary Lou Wilson  
Attorney General Brian Sandoval/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk