

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTIONNE JOSEPH A/K/A ANTIONE  
JOSEPH A/K/A ANTOINNE JOSEPH  
A/K/A ANTOINE JOSEPH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44634

**FILED**

DEC 09 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Antionne Joseph was originally charged with one count each of burglary while in possession of a firearm, robbery with the use of a deadly weapon, and possession of a firearm by an ex-felon. On October 13, 1998, Joseph pleaded guilty to one count of robbery with the use of a deadly weapon. The district court sentenced Joseph to serve two consecutive prison terms of 36 to 96 months. The judgment of conviction was entered on January 22, 1999. Joseph did not file a direct appeal.

On August 13, 1999, Joseph filed a proper person post-conviction petition for a writ of habeas corpus. Without appointing counsel or conducting an evidentiary hearing, the district court denied Joseph's petition. Joseph appealed, and this court remanded the case to

the district court with instructions to conduct an evidentiary hearing to determine whether Joseph was deprived of his right to a direct appeal.<sup>1</sup>

After conducting an evidentiary hearing, the district court denied Joseph's petition, finding that he was not deprived of his right to a direct appeal. Joseph appealed, and this court reversed the order of the district court and remanded the matter to allow Joseph, with the assistance of counsel, to file a post-conviction petition for a writ of habeas corpus raising direct appeal issues pursuant to Lozada v. State.<sup>2</sup>

On remand, Joseph, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus raising direct appeal claims. The State opposed the petition. After hearing arguments from counsel, the district court denied the petition. Joseph filed this timely appeal.

Joseph contends that the district court erred in denying the petition because the State breached a plea agreement. Specifically, Joseph argues that, four months prior to entering the instant plea bargain, the State withdrew a more favorable offer that Joseph had detrimentally relied on by waiving his preliminary hearing.<sup>3</sup> We conclude that the district court did not err in denying the petition.

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<sup>1</sup>Joseph v. State, Docket No. 35369 (Order of Reversal and Remand, February 12, 2002).

<sup>2</sup>Joseph v. State, Docket No. 40249 (Order of Reversal and Remand, November 21, 2003) (citing Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994)).


<sup>3</sup>The State withdrew the first offer after Joseph received numerous continuances of the scheduled arraignment so that he could retain private counsel to review the plea bargain.

"[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>4</sup>

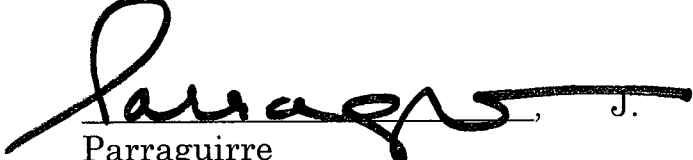
In this case, Joseph waived his right to challenge the prosecutor's purported breach of a prior plea agreement by subsequently entering into another plea agreement without expressly preserving the right to raise the issue on appeal.<sup>5</sup> Accordingly, we conclude that the district court did not err in denying Joseph's petition.

Having considered Joseph's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).

<sup>5</sup>See NRS 174.035(3).

cc: Hon. Michelle Leavitt, District Judge  
Lizzie R. Hatcher  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk