

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP A. COVARRUBIAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45320

**FILED**

**MAR 13 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus and motion to withdraw guilty plea. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Pursuant to a plea of nolo contendere<sup>1</sup>, appellant Phillip Covarrubias was convicted on December 6, 2004. Covarrubias did not file a direct appeal. Covarrubias has filed a timely post-conviction habeas petition.

On April 29, 2004, an evidentiary hearing was held to address the issues in Covarrubias's petition and motion. The district court denied Covarrubias's claims. This appeal followed.

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<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

Covarrubias propounds three issues in this appeal. First, he contends the district court erred in its conclusion that trial counsel was not ineffective. Second, he contends the district court erred by denying his motion in limine. Finally, Covarrubias presents to this court that his plea was invalid because the guilty plea agreement was ambiguous as to punishment.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>2</sup> Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>3</sup> The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>4</sup>

Covarrubias further asserts that the decision to withdraw a plea is personal and belongs to the defendant.<sup>5</sup> While this is true, it does not amount to a conclusion that counsel was ineffective. The district court explained it was not convinced Covarrubias actually requested counsel to

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

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

<sup>5</sup>Parker v. State, 100 Nev. 264, 679 P.2d 1271 (1984).

file a motion to withdraw his plea. If there was not an actual request to file the motion, and counsel believed there was no merit to such a motion, counsel cannot be said to be ineffective.

Further, Covarrubias contends his plea was invalid because prior to entering his plea, he filed a motion in limine to admit an audio tape that the district court ruled inadmissible. By pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea.<sup>6</sup> In Webb v. State, this court explained that:

a guilty plea represents a break in the chain of events which has preceded it in the criminal process. 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 independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.<sup>7</sup>

Further, there is no indication in the record that appellant expressly preserved this issue for review on appeal.<sup>8</sup> Accordingly, we will not consider it now.

Covarrubias further contends that the guilty plea is invalid because it was ambiguous as to the terms of maximum punishment. During the plea canvass, Covarrubias stated he understood the

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<sup>6</sup>See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

<sup>7</sup>Id. (quoting Tollett at 267).


<sup>8</sup>NRS 174.035(3).

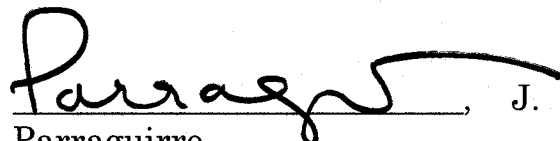
negotiations and that he had no questions. The plea agreement explicitly informed Covarrubias he faced 2-20 years in prison on each count, but that the State would not argue for more than 10 years on each count. Covarrubias's sentence is in fact, within both of these parameters spelled out in the plea agreement. Accordingly, we conclude that the district court did not err and Covarrubias' guilty plea was valid.

Based on all of the above, we conclude that the district court did not err in its decision to deny any of Covarrubias's claims. Therefore, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

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

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

cc: Hon. Donald M. Mosley, District Judge  
Steven B. Wolfson, Chtd.  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk