IN THE SUPREME COURT OF THE STATE OF NEVADA

JORGE ALBERTO CHAVEZ-VALENCIA,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON, MICHAEL BUDGE,
Respondent.

No. 45958

FILED

JUN 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY 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. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On July 11, 2001, appellant Jorge Alberto Chavez-Valencia was convicted, pursuant to a jury verdict, of two counts of level-three trafficking in a controlled substance. The district court sentenced Valencia to serve two concurrent prison terms of life with parole eligibility in 10 years. Valencia filed a direct appeal, and this court affirmed the judgment of conviction.[1] On October 21, 2002, Valencia filed a timely proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Valencia, and counsel filed a supplement to the petition. After conducting an evidentiary hearing, the district court denied the petition. Valencia filed this timely appeal.

Valencia first contends that the district court erred by rejecting his claim that defense counsel was ineffective for failing to

[1]Chavez-Valencia v. State, Docket No. 38309 (Order of Affirmance, March 28, 2002).

challenge the sufficiency of the evidence presented at the preliminary hearing. Citing to Sheriff v. Shade,[2] Valencia contends that defense counsel should have filed a pretrial petition for a writ of habeas corpus alleging that the State failed to present evidence at the preliminary hearing proving that he had exclusive control over the vehicle and residence where the controlled substances were found. The district court rejected Valencia's claim, finding that counsel was not ineffective for failing to file a pretrial writ petition because the State presented adequate evidence at the preliminary hearing in support of the trafficking charges.[3] We conclude that the district court's finding is supported by substantial evidence.[4]

In particular, at the preliminary hearing, a police officer testified that he observed Valencia drive the vehicle at issue to the location of a controlled drug-buy under police surveillance one day before his arrest. Also, a police officer testified that Valencia, on the day of his arrest, possessed the keys to the vehicle and admitted that he borrowed the vehicle from a friend and had been driving it for a "few days." Likewise, a police officer testified that Valencia admitted he resided at the apartment at issue, explaining that a friend allowed him to live there with a female and a child. Given the evidence presented at the preliminary hearing that Valencia had possession of the residence and vehicle where

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[2]109 Nev. 826, 830, 858 P.2d 840, 842 (1993) ("'[P]ossession may be imputed when the contraband is found in a location which is immediately and exclusively accessible to the accused and subject to [his] dominion and control.'") (quoting Glispey v. Sheriff, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973)).

[3]See Strickland v. Washington, 466 U.S. 668 (1984).

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

the controlled substances were found, Valencia failed to show that his defense counsel was ineffective for failing to file a pretrial petition for a writ of habeas corpus.[5]

Valencia also contends that defense counsel was ineffective for failing to object to the admission of several items of evidence, including the methamphetamine, signed consent-to-search form, keys to the vehicle, pager, pay-owe sheets, drug-packaging equipment, and a paycheck stub. Valencia argues that defense counsel should have objected on the grounds that the evidence was irrelevant and prejudicial or that the State failed to establish a sufficient evidentiary foundation. Also, Valencia argues that defense counsel should have objected to the admission of the pay-owe sheets and consent form on the ground that they contained inadmissible hearsay and on the additional ground that the consent to search was involuntary. We conclude that the district court did not abuse its discretion by denying Valencia's claim.

At the post-conviction hearing, former defense counsel, Edward Horn, testified that he did not object to the admission of the items of evidence because he did not believe there was a valid legal basis for exclusion. Valencia failed to show that defense counsel's evaluation of the admissibility of the evidence was deficient and the district court would have excluded the evidence had defense counsel objected. In particular, we note that the evidence was relevant to prove the charged trafficking crimes; the pager, pay-owe sheets, and drug-packaging materials are tools of the trade of drug trafficking, and the paycheck stub and car keys were

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[5]Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (recognizing that the probable cause determination may based on slight or marginal evidence).

relevant to prove that Valencia possessed the controlled substances.[6] With respect to the other objections, Valencia has failed to articulate a cogent argument, or provide any evidence at the post-conviction hearing explaining why (1) the evidentiary foundation was inadequate,[7] (2) his consent to search was involuntary, and (3) the pay-owe sheets and consent form contained inadmissible hearsay.[8] Accordingly, the district court did not err in rejecting Valencia's claim because he failed to show that defense counsel was ineffective for not objecting to the admission of the evidence.

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

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

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[6]See NRS 48.015-.035.

[7]Valencia does not even allege a break in the chain of custody, but instead argues that it is possible that the police officers may not have remembered or been able to identify particular items of evidence.

[8]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). We note that, even assuming the statements in the pay-owe sheets and consent form were offered for the truth of the matter, they would have been admissible as an admission of a party opponent. See NRS 51.035(3).

cc: Hon. Robert H. Perry, District Judge
Hardy & Associates
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk