

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENCARNACION AGUILAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45967

**FILED**

MAR 24 2006

*J. B. BLOOM*  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. Appellant Encarnacion Aguilar was convicted, pursuant to a jury verdict, of one count of level-three trafficking. Aguilar filed a direct appeal, and this court affirmed the judgment of conviction.<sup>1</sup> Aguilar filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, who filed a supplemental petition. Following an evidentiary hearing, the district court denied the petition.

Aguilar argues that the district court erred by denying the petition because counsel was ineffective for failing to seek the disclosure of the identity of the confidential informant prior to the preliminary hearing,

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<sup>1</sup>Aguilar v. State, No. 40072 (Order of Affirmance, December 5, 2003).

and for failing to present a procuring agent defense.<sup>2</sup> The district court found that appellant had failed to establish prejudice and that counsel was not ineffective.<sup>3</sup> Specifically, the district court found that even if counsel had learned the identity of the confidential informant before the preliminary hearing, the outcome of the trial would not have changed. The district court further found that a procuring agent defense was not available to Aguilar, because his defense at trial was that he was not present when the drugs were sold. Finally, the district court found that there was overwhelming evidence of Aguilar's guilt.

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> Aguilar has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.

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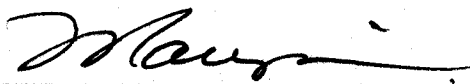
<sup>2</sup>In the fast track statement, instead of providing a statement of facts with citations to the record, counsel "incorporates as if fully set forth the Statement of Facts set forth in Mr. Aguilar's pro se Petition for a Writ of Habeas Corpus (Post Conviction)." Counsel is reminded that NRAP 28(e) specifically prohibits such incorporation by reference.


<sup>3</sup>See Strickland v. Washington, 466 U.S. 668, 687 (1984); accord Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984) (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 deficient performance prejudiced the defense).


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

Moreover, Aguilar has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin  
 J.  
Gibbons

 J.  
Hardesty

cc: Hon. Lee A. Gates, District Judge  
Law Offices of Cristina Hinds, Esq.  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk