

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY ALVARENGA-MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46110

FILED

MAR 16 2006

ORDER OF AFFIRMANCE

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

This is a proper person 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; Valorie Vega, Judge.

On August 4, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count each of sexual assault of a minor under the age of sixteen and lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve a term of 15 to 40 years for the sexual assault count, and a concurrent term of life in the Nevada State Prison with the possibility of parole for the lewdness count.¹ Appellant did not file a direct appeal.

On May 17, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an opposition. Pursuant to NRS 34.750 and 34.770, the district

¹On August 11, 2004, the district court filed an amended judgment of conviction to include credit for time served.

court declined to appoint counsel to represent appellant or conduct an evidentiary hearing. On July 15, 2005, the district court denied appellant's petition. On September 29, 2005, the district court amended the order denying appellant's proper person post-conviction petition for a writ of habeas corpus, supplementing the original order with specific findings of fact and conclusions of law. This appeal followed.

In his petition, appellant contended that his counsel was ineffective.² To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.³ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁴

Appellant claimed that his counsel was ineffective for failing to provide a guilty plea agreement written in the Spanish language.

²To the extent that appellant raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a).

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

⁴Strickland v. Washington, 466 U.S. 668, 697 (1984).

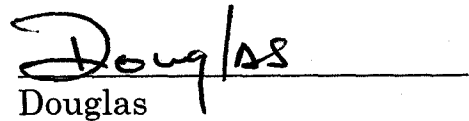
Appellant also claimed that his counsel was ineffective for failing to insure that the interpreter correctly translated the plea agreement to appellant. Specifically, appellant claimed that his counsel did not insure that the interpreter correctly translated the consequences of his guilty plea, culminating in a plea that was unknowing and involuntary. Appellant failed to demonstrate that counsel was deficient. Appellant was provided with a certified interpreter, who read the plea agreement to appellant word for word. Appellant acknowledged during the plea canvass that the entire plea agreement was read to him in Spanish by a certified interpreter, and that he understood the contents. Counsel stated on the record that he had specifically reviewed the consequences of the plea with appellant. Thus, the district court did not err in denying this claim.


Appellant also claimed that his counsel was ineffective for not insuring that appellant was afforded the opportunity to have a psychosexual examination in order to argue for the granting of probation. Appellant failed to demonstrate that counsel was deficient. Appellant was convicted of sexual assault of a minor under the age of sixteen and lewdness with a minor under the age of fourteen. The court cannot grant probation or suspend a sentence for either of these convictions, and therefore, a psychosexual examination was not required.⁵ Thus, the district court did not err in denying this claim.

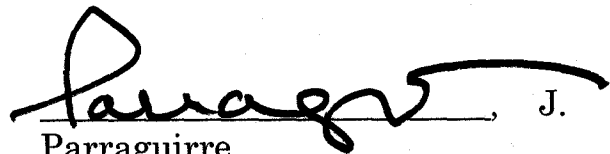
⁵See NRS 176A.100(1)(a); NRS 176.139.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Henry Alvarenga-Martinez
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.