

IN THE SUPREME COURT OF THE STATE OF NEVADA

IVAN RAFAEL HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46519

FILED

MAY 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant Ivan Rafael Hernandez was originally convicted, pursuant to a plea of nolo contendere,¹ of one count of burglary. The district court sentenced Hernandez to a prison term of 12 to 48 months, but suspended the sentence and placed Hernandez on probation for a fixed term of four years. If Hernandez successfully completed his probation, the burglary count was to be dismissed.

Approximately a year later, the State filed a violation report, alleging that Hernandez failed to report, admitted to using marijuana, had been arrested for possession of a controlled substance, had been charged with driving under the influence, failed to pay his supervision fees, and failed to attend alcohol/substance abuse counseling. The district court

¹Appellant pleaded guilty pursuant to 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).

reinstated Hernandez' probation and, as an additional condition of probation, ordered Hernandez to be placed in an inpatient drug treatment facility.

Subsequently, the Immigration and Naturalization Service placed a hold on Hernandez, which prevents him from being placed in an inpatient drug treatment facility. Hernandez filed a motion to withdraw his plea, which was denied by the district court.

Hernandez contends that the district court should have allowed him to withdraw his plea because his attorney was ineffective for advising Hernandez to plead guilty. Specifically, Hernandez argues that his attorney should have advised Hernandez not to plead guilty because of the immigration consequences, which effectively prevent Hernandez from completing probation and obtaining the benefit of his plea agreement.

NRS 176.165 provides, in pertinent part, that a judgment of conviction may be set aside and the guilty plea withdrawn after sentencing "[t]o correct manifest injustice." We conclude that Hernandez has failed to demonstrate that his guilty plea resulted in a manifest injustice.

Specifically, we note that at the entry of his plea, Hernandez informed the court that he had read the plea agreement and understood everything contained in the agreement. The agreement specifically noted the potential immigration consequences, and those potential consequences were also noted in the presentence investigation report.

Moreover,

the trial court's failure to advise a defendant of the possible immigration consequences of a guilty plea does not render the plea involuntary. Similarly, trial counsel's failure to provide such information does not fall below an objective standard of


reasonableness and, thus, does not rise to the level of ineffective assistance of counsel.²

We therefore conclude that the district court did not err by denying Hernandez' motion to withdraw his plea, and we

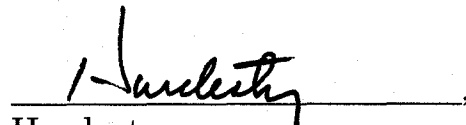
ORDER the judgment of the district court AFFIRMED.³

 J.

Maupin

 J.

Gibbons

 J.
Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Xavier Gonzales
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

²Barajas v. State, 115 Nev. 440, 442, 991 P.2d 474, 476 (1999) (citations omitted).

³On April 14, 2006, Hernandez filed a motion to stay this appeal pending the resolution of his application for citizenship. The motion for a stay is denied.