

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOEL LEYVA,
Appellant,
vs.
CITY OF LAS VEGAS,
Respondent.

No. 46604

FILED

JUN 30 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant's petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On March 1, 2004, appellant Noel Leyva was convicted, pursuant to a nolo contendere plea, of one count of misdemeanor domestic battery. The municipal court sentenced Leyva to serve 2 days in jail, with 2 days of credit for time served.

On March 8, 2004, Leyva, with the assistance of new counsel, filed a motion to withdraw his plea in the municipal court, alleging that his nolo contendere plea was invalid because he was not advised of the elements of the crime or that he would lose his permit to carry a concealed weapon. The City opposed the motion. The municipal court denied Leyva's motion, and he then appealed to the district court. After hearing arguments from counsel, the district court affirmed the municipal court's decision. Leyva filed a notice of appeal in this court, but his appeal was dismissed for lack of jurisdiction.¹

¹Leyva v. City of Las Vegas, Docket No. 44380 (Order Dismissing Appeal, February 28, 2005). Because Leyva's case arose in the municipal
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On April 6, 2005, Leyva, with the assistance of counsel, filed an original petition for a writ of mandamus in this court. The petition challenged the district court's decision affirming the denial of Leyva's motion to withdraw the guilty plea. This court denied the petition.²

On October 31, 2005, Leyva, with the assistance of counsel, filed a "petition for a writ of habeas corpus" in the district court. The State opposed the petition. After hearing arguments from counsel, the district court denied the petition. Leyva filed this timely appeal.

Leyva contends that the district court erred by denying his petition because his nolo contendere plea was unknowing. Specifically, Leyva contends that his nolo contendere plea was invalid because he was factually innocent and did not understand the elements of the crime or the significance of a nolo contendere plea. Further, Leyva contends that his nolo contendere plea was invalid because he was not advised that, as a consequence of his plea, he would lose his permit to carry a concealed weapon.

We conclude that the district court did not err in denying Leyva's petition. His challenge to the validity of the nolo contendere plea should have been raised in a post-conviction petition for a writ of habeas corpus filed pursuant to NRS Chapter 34.³ To the extent that Leyva filed

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court, the district court had final appellate jurisdiction. See Nev. Const. art. 6, § 6; Tripp v. City of Sparks, 92 Nev. 362, 550 P.2d 419 (1976).

²Leyva v. District Court, Docket No. 45029 (Order Denying Petition, July 26, 2005).

³See NRS 34.724(2)(b) (A post-conviction petition for a writ of habeas corpus "takes the place of all other common-law, statutory or other

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such a petition, the petition was procedurally barred because it was untimely, and he failed to allege good cause and prejudice to overcome the procedural default.⁴

Moreover, prior to the instant case, the district court had previously considered the validity of the nolo contendere plea in Leyva's appeal from the municipal court order denying the motion to withdraw the guilty plea. In that appeal, the facts and claims were substantially the same; namely, Leyva argued that his nolo contendere plea was invalid because he did not know the elements of the offense and did not know that he would lose his permit to carry a concealed weapon.⁵ After considering the briefs and arguments from counsel, the district court found that the municipal court did not err in finding that the nolo contendere plea was valid. The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument."⁶

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remedies which have been available for challenging the validity of the judgment of the conviction or sentence, and must be used exclusively in place of them").

⁴NRS 34.726(1); NRS 34.810.

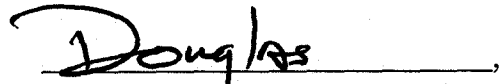
⁵See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975) (the law of a first appeal is the law of the case in all later appeals in which the facts are substantially the same).

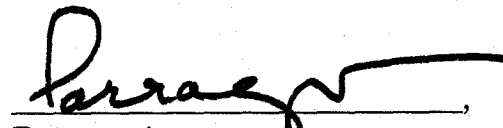
⁶Id. at 316, 535 P.2d at 799. We note that the parties' appellate briefs discuss the merits of Leyva's claims and do not address the procedural bars. To the extent that the district court considered the merits of Leyva's claims, we note that it correctly determined that Leyva entered a valid plea. See State v. Freese, 116 Nev. 1097, 13 P.3d 442

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

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Douglas


_____, J.
Parraguirre


_____, Sr. J.
Shearing

cc: Hon. Michael A. Cherry, District Judge
Warhola & Brooks, LLP
Las Vegas City Attorney
Clark County Clerk

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(2000); see generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied "clearly and expressly" on procedural bar) (citation omitted).

⁷The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.