

IN THE SUPREME COURT OF THE STATE OF NEVADA

AVELINO GARCIA ALVAREZ A/K/A
AVELINO GARCIA ALVEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46628

FILED

JUN 29 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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; Steven P. Elliott, Judge.

On August 29, 2002, appellant Avelino Garcia Alvarez was convicted, pursuant to a guilty plea, of two counts of trafficking in a controlled substance. The district court sentenced Alvarez to serve two concurrent prison terms of 10 to 25 years. Alvarez filed a direct appeal, and this court affirmed the judgment of conviction.¹

On June 3, 2004, Alvarez filed a proper person petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Alvarez, and counsel filed a supplement to the petition. The district court denied the petition without conducting an evidentiary hearing. This appeal followed.

In his petition below, Alvarez claimed that his plea was involuntary because his defense counsel took advantage of his inability to understand English and the translator failed to correctly interpret the

¹Alvarez v. State, Docket No. 40295 (Order of Affirmance, August 19, 2003).

plea agreement. On appeal, Alvarez contends that the district court improperly rejected this claim without an evidentiary hearing. The State has filed a confession of error in this court, conceding that this claim is not repelled by the record. In light of the State's confession of error, we conclude that an evidentiary hearing is warranted on whether the translator completely and accurately translated the plea agreement.

Alvarez also contends that the district court erred by rejecting his claim that defense counsel was ineffective at sentencing for failing to present evidence detailing Alvarez's efforts to provide substantial assistance pursuant to NRS 453.3405. We conclude that the district court did not err in rejecting Alvarez's claim without conducting an evidentiary hearing because it is belied by the record.²

At the sentencing hearing, both defense counsel and Alvarez conceded that Alvarez did not assist law enforcement. Specifically, defense counsel explained that Alvarez had met with law enforcement officers, but because "he was a fairly low-level player in the [drug] enterprise" he did not "have information that he could leverage into a more favorable position for himself." Likewise, in his statement of allocution, Alvarez conceded that he was not able to cooperate with law enforcement because he had no information to provide. Further, in affirming Alvarez's sentence, this court rejected Alvarez's argument that his mere willingness to work with law enforcement should have reduced his sentence, noting that it was "undisputed that Alvarez did not actually provide substantial assistance."³ Finally, we note that Alvarez's claim

²See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

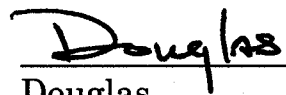
³Alvarez, Docket No. 40295, at 2. See generally Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975) (the law of a first appeal is the law of the case in all later appeals in which the facts are substantially

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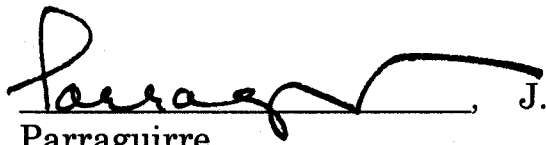
fails for lack of specificity because he did not identify the law enforcement officers who should have testified or describe the potential testimony explaining the substantial assistance he provided.⁴ Accordingly the district court did not err in rejecting Alvarez's claim.

In light of the State's confession of error, we remand this appeal to the district court for an evidentiary hearing on Alvarez's claim that his interpreter did not completely and accurately translate the plea agreement. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁵


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

... continued

the same and cannot be avoided by more detailed and precisely focused argument).

⁴See Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001).

⁵This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Steven P. Elliott, District Judge
John J. Kadlic
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk