

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO CHAVEZ-MARTINEZ A/K/A
JULIO CESAR CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47029

FILED

SEP 07 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF 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; Michael A. Cherry, Judge.

On May 11, 2005, appellant Julio Chavez-Martinez was convicted, pursuant to a guilty plea, of one count of attempted robbery. The district court sentenced Chavez-Martinez to a prison term of 4 years, but suspended execution of the sentence and placed him on probation for a fixed term of 5 years. Chavez-Martinez did not file a direct appeal.

On December 5, 2005, Chavez-Martinez, with the assistance of counsel, filed a post-conviction motion to withdraw the guilty plea. The State opposed the motion. After conducting an evidentiary hearing, the district court denied the motion. Chavez-Martinez filed this timely appeal.

Chavez-Martinez contends that the district court erred by denying his motion because his guilty plea was not knowing and intelligent, was the product of ineffective assistance of counsel, and has resulted in a manifest injustice. Specifically, Chavez-Martinez argues that, even though he had a viable defense, he pleaded guilty based on defense counsel's failure to explain the direct consequences of the plea and

his affirmative misrepresentation that Chavez-Martinez's lawful permanent resident status would not be affected.¹ Alternatively, citing to numerous cases from other jurisdictions, Chavez argues that he should have been advised that deportation was automatic and certain and the lack of such an advisement on the record renders the guilty plea invalid and defense counsel ineffective. We disagree.

NRS 176.165 provides, in part, that a defendant may be permitted to withdraw his guilty plea after sentencing "[t]o correct manifest injustice." This court presumes "that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."²

After conducting an evidentiary hearing, the district court found that Chavez-Martinez was properly advised about the direct consequences of his guilty plea and was not misadvised about deportation. We conclude that the district court's findings are supported by substantial evidence. In particular, the record indicates that Chavez-Martinez was thoroughly canvassed by the district court and signed a written plea agreement advising him of the direct consequences of the guilty plea. Notably, the written plea agreement included an advisement that, as a result of the guilty plea, Chavez-Martinez may be subject to deportation. Further, at the post-conviction hearing, defense counsel Chris Rasmussen testified that he never advised Chavez-Martinez that his immigration

¹Chavez notes that under federal law deportation is mandatory because he pleaded guilty to an aggravated felony.


²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).


status would be unaffected by the guilty plea and did not recall discussing his "deportation status, either one way or the other."

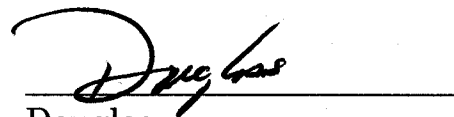
Although it is certainly a good practice for defense counsel to advise a client of deportation, if foreseeable, this court recognized in Barajas v. State that the lack of an advisement about the collateral consequence of deportation does not render the plea involuntary or defense counsel ineffective.³ We decline Chavez-Martinez's invitation to modify or overrule Barajas. Accordingly, we conclude that the district court did not err by denying the motion to withdraw the guilty plea.

Having considered Chavez-Martinez's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

³Barajas v. State, 115 Nev. 440, 442, 991 P.2d 474, 476 (1999).

cc: Hon. Michael A. Cherry, District Judge
Xavier Gonzales
Law Office of Benson Lee, Esq.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk