IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47280

FILED

AUG 25 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Sally L. Loehrer, Judge.

On July 19, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to violate the controlled substance act and two counts of sale of a controlled substance. The district court sentenced appellant to serve in the Nevada State Prison a term of twelve to thirty-six months, a consecutive term of eighteen to forty-eight months, and a concurrent term of eighteen to forty-eight months. Appellant did not file a direct appeal.

On January 12, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 7, 2006, the district court denied appellant's petition. This appeal followed.

06-17708

In his petition, appellant contended that his counsel was ineffective.[1] 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.[2] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[3] A guilty plea is presumptively valid, and appellant carries the burden of establishing that his plea was not entered knowingly and intelligently.[4] In determining the validity of a guilty plea, this court looks to the totality of the

---

[1]To 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).

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

[3]Strickland v. Washington, 466 U.S. 668, 697 (1984).

[4]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

circumstances.[5] This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[6]

First, appellant contended that his counsel was ineffective for failing to insure that his plea agreement was in Spanish, and for failing to insure that appellant understood the plea agreement, thus, resulting in his guilty plea being entered involuntarily and unknowingly. Appellant failed to demonstrate that his counsel was ineffective or, from the totality of circumstances, that his plea was involuntarily or unknowingly entered. Appellant was provided with the services of an interpreter who read appellant's plea agreement to him. During appellant's plea canvass, appellant stated through the interpreter that he understood the charges against him and the plea agreement, and that he was pleading freely and voluntarily. Appellant answered all the district court's questions appropriately. Appellant failed to demonstrate that if the plea agreement had been written in Spanish, appellant would have refused to plead guilty and would have proceeded to trial. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to object to a breach of the plea agreement. Specifically, appellant claimed that his counsel should have objected because the State had agreed that all of appellant's terms would run concurrently. Appellant

---

[5]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

[6]Hubbard, 110 Nev. 671, 877 P.2d 519.

failed to demonstrate that counsel was ineffective and his claim is not supported by the record. Appellant's plea agreement, which was read to appellant and signed by him, stated that the judge had the discretion to sentence appellant to either concurrent or consecutive sentences, appellant had not been promised or guaranteed any particular sentence, and the district court was not obligated to accept either the State's or counsel's sentence recommendation. Prior to sentencing, the State argued for consecutive sentences, while appellant's counsel argued for concurrent sentences, thus, it was apparent that appellant was aware that he could be sentenced to consecutive sentences. This court has stated that a "'mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.'"[7] Thus, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to insure that the plea agreement discussed the rights that appellant was waiving pursuant to his guilty plea. This claim is belied by the record.[8] The guilty plea agreement specifically discussed appellant's waiver of rights, and an interpreter read the plea agreement to appellant. Thus, the district court did not err in denying this claim.

---

[7]State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

[8]Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Appellant also claimed that counsel was ineffective for failing to inform appellant that because he was a foreign national, he had a right to contact the Mexican embassy or consulate pursuant to the Vienna Convention,[9] and that this court should apply the "rule of lenity."

The Vienna Convention is a multilateral treaty negotiated in 1963 to which the United States is a party.[10] Article 36 of the treaty provides that a foreign national who is "arrested or committed to prison or to custody pending trial or is detained in any other manner" has the right to have his foreign consulate notified and to communicate with the consulate.[11] Article 36 also requires that arresting authorities inform the detained person of these rights.[12]

Preliminarily, we note that it questionable whether the Vienna Convention created an individually enforceable right.[13] Nevertheless, even assuming appellant has standing to enforce an alleged violation of the Vienna Convention, he did not establish that counsel's failure to notify the Mexican consulate caused him prejudice such that, if the consulate had been notified, appellant would have refused to plead guilty and would have insisted on proceeding to trial. In Garcia v. State,

---

[9]See Vienna Convention, 21 U.S.T. 77.

[10]See id.

[11]Id. at 101.

[12]Id.

[13]See Breard v. Greene, 523 U.S. 371, 376 (1998) (commenting that the Vienna Convention "arguably" creates individually enforceable rights).

this court rejected the proposition that a violation of the Vienna Convention requires automatic reversal of a conviction.[14] Consequently, the district court did not err in denying this claim.

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.[15] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[16]

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

---

[14]117 Nev. 124, 129, 17 P.3d 994, 997 (2001) (holding that, "a Vienna Convention violation is not of the constitutional dimension required for structural error").

[15]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[16]We 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.

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