

IN THE SUPREME COURT OF THE STATE OF NEVADA

AVELINO GARCIA ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48681

FILED

SEP 07 2007

ORDER OF AFFIRMANCE

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

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

Alvarez filed a timely post-conviction petition in the district court, and the district court denied the petition without conducting an evidentiary hearing. On appeal from that order, this court affirmed in part, but reversed and remanded to allow the district court to conduct an evidentiary hearing on Alvarez' claim that the translator did not correctly interpret the plea agreement.²

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


²Alvarez v. State, Docket No. 46628 (Order Affirming in Part, Reversing in Part and Remanding, June 29, 2006).

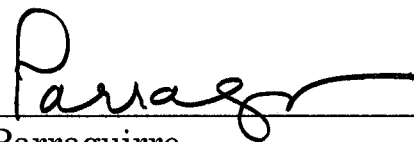
On remand, the district court conducted an evidentiary hearing and subsequently denied the remaining claim. Specifically, the district court found that Alvarez' testimony was not credible and upon review of the totality of the circumstances, Alvarez' plea was knowingly and voluntarily entered. This appeal followed.


A district court's factual findings regarding a post-conviction habeas petition are entitled to deference when reviewed on appeal.³ Alvarez has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Alvarez has not demonstrated that the district court erred as a matter of law.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

cc: Hon. Steven P. Elliott, District Judge
Scott W. Edwards
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk