

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMAN ANIBAL LIMA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48813

**FILED**

MAY 11 2007

JANEITE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

On September 28, 2004, appellant Herman Anibal Lima was convicted, pursuant to a guilty plea, of one count each of attempted sexual assault and attempted first-degree kidnapping. The district court sentenced Lima to serve two concurrent prison terms of 96 to 240 months. Lima did not file a direct appeal.

On August 17, 2005, Lima filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition, and the district court appointed counsel to represent Lima. The district court denied the petition. Lima filed this timely appeal.

Lima contends that his guilty plea was invalid because he did not understand the elements and the sentencing ranges of the charged offenses, and he was not provided with a Spanish-language translation of the written plea agreement. Lima also contends that defense counsel was

ineffective for failing to argue that the sentences were probationable under Apprendi v. New Jersey.<sup>1</sup> We conclude that Lima's contentions lack merit.

After conducting an evidentiary hearing, the district court found that defense counsel was not ineffective.<sup>2</sup> The district court also found that Lima entered a knowing and voluntary guilty plea.<sup>3</sup> The district court's factual findings are entitled to deference when reviewed on appeal.<sup>4</sup> Lima has failed to demonstrate that the district court's findings were not supported by substantial evidence or were clearly wrong.<sup>5</sup> Moreover, Lima has failed to demonstrate that the district court erred as a matter of law.<sup>6</sup>

In particular, we note that the totality of the circumstances indicates that Lima entered a valid guilty plea. Lima signed a written plea agreement and was thoroughly canvassed by the district court. Although Lima had a limited understanding of English, a Spanish-speaking interpreter testified at the post-conviction hearing that he orally translated both the guilty plea agreement and the plea canvass. Further, Lima was correctly advised that the offenses to which he was pleading

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<sup>1</sup>530 U.S. 466 (2000).

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984).

<sup>3</sup>See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

<sup>4</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994); Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

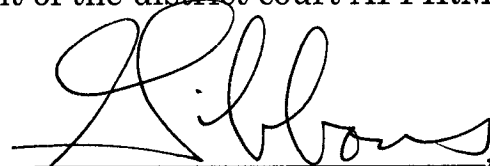
<sup>5</sup>See Riley, 110 Nev. at 647, 878 P.2d at 278; see also Hubbard, 110 Nev. at 675, 877 P.2d at 521.

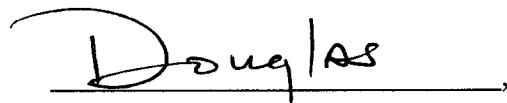
<sup>6</sup>See Riley, 110 Nev. at 647, 878 P.2d at 278.

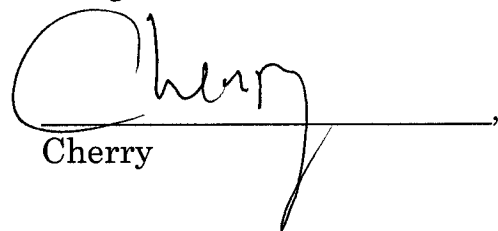
guilty were probationable.<sup>7</sup> Accordingly, the district court did not abuse its discretion in denying the petition.

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

ORDER the judgment of the district court AFFIRMED.

  
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Gibbons J.

  
\_\_\_\_\_  
Douglas J.

  
\_\_\_\_\_  
Cherry J.

cc: Hon. Robert W. Lane, District Judge  
Robert E. Glennen III  
Attorney General Catherine Cortez Masto/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk

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<sup>7</sup>See NRS 176A.100(1)(a). At the plea canvass, the prosecutor intimated that he was going to argue at the sentencing hearing that Lima was ineligible for probation because the victim was under 16 years of age. However, the prosecutor never made such an argument at sentencing. To the extent that Lima argues that defense counsel was ineffective for failing to argue for probation, Lima has failed to show he was prejudiced by any alleged deficiency in defense counsel's argument at sentencing.