

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERARDO HUMBERTO-MAURICIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49926

FILED

SEP 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Gerardo Humberto-Mauricio's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

On March 15, 2006, the district court convicted Humberto-Mauricio, pursuant to a guilty plea, of one count of trafficking in a schedule I controlled substance. The district court sentenced Humberto-Mauricio to serve a prison term of 25 years and ordered him to pay a fine of \$5,000. Humberto-Mauricio did not file a direct appeal.

On October 24, 2006, Humberto-Mauricio filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, but counsel did not supplement the petition. The State filed an answer to the petition and a motion to dismiss some of the claims alleged in the petition. The district court entered an order denying the petition. This appeal follows.

Humberto-Mauricio's fast track statement is not a model of clarity. However, he appears to claim that the district court abused its discretion by denying four of his claims of error without the benefit of an evidentiary hearing. Humberto-Mauricio specifically asserts that the

“district court could not and cannot make an evaluation of the communication between petitioner/appellant and counsel based solely on the plea canvass.”

“A post-conviction habeas petitioner is entitled to an evidentiary hearing ‘only if he supports his claims with specific factual allegations that if true would entitle him to relief.’ However, if the record belies the petitioner’s factual allegations, the petitioner is not entitled to an evidentiary hearing.”¹

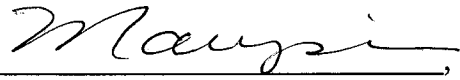
In his petition, Humberto-Mauricio claimed that defense counsel provided ineffective assistance of counsel by (1) threatening that he would receive a 30-year prison sentence if he went to trial instead of pleading guilty, (2) ignoring his statements that the confidential informant had threatened to hurt him and his wife if he did not provide the controlled substance, (3) disregarding his assertions that his wife and children had been threatened by the dealer and that shots had been fired into his van, and (4) failing to investigate his claim that he never possessed the controlled substance.

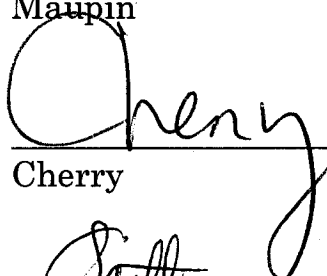
The district court found that Humberto-Mauricio’s claims of ineffective assistance of counsel were belied by both his written plea agreement and the transcript of his arraignment. Our review of the record on appeal reveals that the district court’s finding of fact is supported by substantial evidence and that Humberto-Mauricio has not demonstrated that the district court was clearly wrong. In particular, we

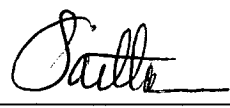
¹Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (footnote omitted) (quoting Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)).

note that the arraignment transcript reveals that Humberto-Mauricio answered "no" when asked if anyone had threatened him or promised him anything to induce him to plead guilty, represented that he had discussed the facts and defenses relating to his case with his attorney, acknowledged that he was confident in his attorney's ability to represent him, and admitted that he possessed more than 28 grams of crystal methamphetamine that he intended to deliver to someone else. Under these circumstances, we conclude that the district court did not abuse its discretion by denying Humberto-Mauricio's petition without the benefit of an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Robert E. Estes, District Judge
Paul G. Yohey
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk