

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER DE LA CARRERA,

No. 34599

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

APR 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Ruben*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On July 24, 1995, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary. The district court sentenced appellant to serve two consecutive ten-year terms in the Nevada State Prison. Appellant appealed from the judgment of conviction. This court concluded that the issue raised by appellant lacked merit and dismissed the appeal.¹ The remittitur issued on June 2, 1998.

On December 18, 1996, appellant filed in the district court a motion to vacate or correct an illegal sentence. The district court denied the motion. This court dismissed the appeal from that decision.²

On April 1, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. 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 September 16, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised three claims based on an allegation that he was not brought before a magistrate within forty-eight hours of his arrest for a determination of probable cause. Appellant contended that the delay deprived him of his right to due process and deprived the district court of jurisdiction and that counsel was ineffective for failing to raise this issue.

The due process and jurisdiction claims fall outside the narrow issues that may be raised in a post-conviction petition challenging a judgment of conviction upon a guilty plea. NRS 34.810(1)(a) provides that the district court must dismiss a petition where the conviction was upon a plea of guilty and "the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." Moreover, by entering a guilty plea, appellant waived any constitutional errors occurring prior to entry of the plea.³ For these reasons, we conclude that the district court did not err in rejecting appellant's due process and jurisdiction

The claim that counsel provided ineffective assistance is properly raised in the petition.⁴ To state a claim of ineffective assistance sufficient to invalidate a conviction based on a guilty plea, a petitioner must demonstrate (1) that counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability that, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial.⁵ The court need not consider both prongs of the ineffective assistance test if the petitioner makes an insufficient showing on either prong.⁶

Our review of the record reveals that appellant received a probable cause determination within forty-eight hours after his arrest. Appellant was arrested on January 13, 1994. The Las Vegas Metropolitan Police Department Temporary Custody Record indicates that a probable cause determination was made on January 14, 1994, well within forty-eight hours of appellant's arrest. Moreover, because this court determined on direct appeal that appellant's confession was voluntary, appellant cannot demonstrate any prejudice based on the alleged delay in the probable cause determination.⁷ Accordingly, we conclude that appellant failed to demonstrate

⁴See NRS 34.810(1)(a).

that counsel was deficient for failing to raise this issue or that appellant was prejudiced by counsel's failure to do so.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Christopher de la Carrera
Clark County Clerk

⁸We note that appellant raised this issue in his motion to vacate or correct an illegal sentence. Because an ineffective assistance claim is not properly raised in such a motion, we declined to address the issue on appeal from the district court's order denying the motion. See De La Carrera v. State, Docket No. 29945 (Order Dismissing Appeal, August 4, 1998). The law of the case doctrine therefore does not apply