

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.B. MIKELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52412

FILED

MAY 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus that was filed pursuant to the remedy provided in Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On August 22, 2005, the district court convicted appellant J.B. Mikell, pursuant to a guilty plea, of one count of child endangerment and one count of assault on an officer. The district court sentenced Mikell to serve two consecutive terms of one year in the county jail. We dismissed Mikell's untimely direct appeal for lack of jurisdiction. Mikell v. State, Docket No. 46050 (Order Dismissing Appeal, December 23, 2005).

On February 15, 2006, Mikell filed a motion for appointment of counsel and a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court denied Mikell's request for counsel, conducted an evidentiary hearing on Mikell's petition, and denied the petition.

On appeal, we concluded that Mikell failed to carry his burden to demonstrate that his guilty plea was entered unknowingly and involuntarily. However, we also concluded that Mikell was denied his right to a direct appeal, and we remanded the matter to the district court with instructions to appoint counsel and allow Mikell to pursue his direct appeal claims in a petition for a writ of habeas corpus. Mikell v. State, Docket No. 47607 (Order Affirming in Part, Reversing in Part and Remanding, November 27, 2006).

On remand, the district court appointed counsel, and counsel filed a Lozada petition on Mikell's behalf. The State filed a response. The district court heard argument on the petition and entered findings of fact, conclusions of law, and an order denying the petition. This appeal followed.

Mikell contends that the district court erred in denying his Lozada petition. Mikell specifically claims that his guilty plea was not entered knowingly or voluntarily because (1) he received no consideration for the plea, and (2) defense counsel was not present at the table to answer his questions when he signed the plea agreement. We conclude that Mikell's challenges to the validity of his guilty plea are not properly raised in a Lozada petition and that they are barred by the doctrine of the law of the case.

The purpose of the Lozada remedy is to allow a defendant who was denied a direct appeal "an opportunity to raise in a petition for a writ of habeas corpus any issues which he could have raised on direct appeal." Lozada, 110 Nev. at 359, 871 P.2d at 950 (emphasis added); see generally

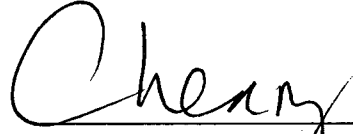
Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994) (identifying claims that may be raised on a direct appeal from a judgment of conviction that was entered pursuant to a guilty plea), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). We do not “permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction.” Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994).

The doctrine of the law of the case provides that “[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (internal quotation marks and citation omitted). We have held that this doctrine “cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799.

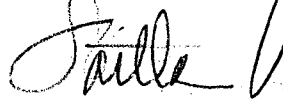
Because Mikell was not permitted to challenge the validity of his guilty plea on direct appeal, he was not permitted to challenge the validity of his guilty plea in his Lozada petition. Moreover, we addressed a substantially similar issue on appeal from the order denying Mikell’s initial petition for a writ of habeas corpus, and we concluded “that [Mikell] failed to carry his burden of demonstrating that his guilty plea was entered unknowingly and involuntarily.” Mikell, Docket No. 47607 (Order Affirming in Part, Reversing in Part and Remanding, November 27, 2006) at 2. Our previous conclusion constitutes the law of the case and bars further litigation of this issue. Under these circumstances, we conclude

that the district court did not err in denying Mikell's Lozada petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.

Cherry


_____, J.

Saitta


_____, J.

Gibbons

cc: Hon. Donald M. Mosley, District Judge
Amesbury & Schutt
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk