

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALVADOR JOSE VENERIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52516

FILED

JAN 07 2010

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 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). Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

The district court convicted appellant Salvador Jose Venerio of one count of trafficking in a controlled substance pursuant to his guilty plea. Later, the district court determined that Venerio was deprived of his right to an appeal, allowed Venerio to pursue his direct appeal claims in a post-conviction petition filed pursuant to Lozada, and denied the petition. This appeal followed.

First, Venerio contends that the district court abused its discretion by relying on a detective's opinion instead of credible evidence to find that he failed to render substantial assistance.¹ However, our

¹Because the Lozada remedy is the functional equivalent of a direct appeal, we review Venerio's claims de novo.

review of the record, particularly the sentencing transcript, reveals that substantial evidence supports the district court's finding that Venerio did not render substantial assistance. See Matos v. State, 110 Nev. 834, 837, 878 P.2d 288, 290 (1994) ("this court may imply findings of fact and conclusions of law if the record clearly supports the lower court's ruling").

Second, Venerio contends that NRS 453.3405 is unconstitutionally vague because it does not define the term "substantial assistance" and therefore does not ensure that the statute is uniformly applied. As used in NRS 453.3405(2), the term "substantial assistance" is not vague or ambiguous, see McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (words in a statute should be given their plain meaning), and we conclude that Venerio has not overcome the presumption that the statute is constitutional, see Williams v. State, 118 Nev. 536, 542, 50 P.3d 1116, 1120 (2002).

Third, Venerio contends that the Lozada remedy is inadequate as a matter of law. We disagree and conclude that Venerio has failed to demonstrate that the Lozada remedy is inadequate. See Evitts v. Lucey, 469 U.S. 387, 399 (1985) (expressing approval of a state court's use of a "post-conviction attack on the trial judgment as the appropriate remedy for frustrated right of appeal" (internal quotation marks omitted)); Gebers v. State, 118 Nev. 500, 505, 50 P.3d 1092, 1095 (2002) (approving of the Lozada remedy for meritorious appeal deprivation claims); Lozada, 110 Nev. at 359, 871 P.2d at 950 (requiring the appointment of counsel to assist a petitioner in raising direct appeal issues).

Fourth, Venerio contends that NRAP 3C chills the constitutional right to a direct appeal because it requires trial counsel to continue to represent a defendant as appellate counsel for free and trial

counsel may not feel effective as appellate counsel. This contention is inconsistent with the plain language of NRAP 3C(b) and contrary to our holding in Wood v. State, 115 Nev. 344, 352, 990 P.2d 786, 791 (1999) (the fast track program does not violate the state and federal constitutions), and we conclude that it is without merit.

Having considered Venerio's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk