

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST JORD GUARDADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52639

FILED

FEB 03 2010

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Ernest Jord Guardado's timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Guardado contends that the district court abused its discretion by denying his motions for new defense counsel. Guardado did not raise this claim on direct appeal and therefore it is waived. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Second, Guardado contends that appellate counsel was ineffective for failing to seek a reversal based on the district court's failure to make a meaningful inquiry into the conflict between him and defense counsel. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). The district court found that (1) it had conducted a sufficient inquiry into the alleged

“irreconcilable conflict,” (2) appellate counsel’s failure to raise this claim was reasonable, and (3) the claim “enjoyed no reasonable probability of success given Guardado’s solemn statements during his change of plea proceeding and the passage of time suggesting a reconciliation.” See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). The district court’s findings of fact are supported by substantial evidence and are not clearly wrong, and Guardado has not demonstrated that the district court erred as a matter of law.

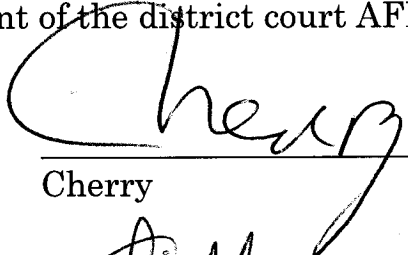
Third, Guardado contends that his guilty plea was the product of coercion and therefore the district court abused its discretion by finding that he entered his plea voluntarily, knowingly, and intelligently. We presume that the district court properly assessed the validity of a guilty plea and we will not reverse the district court’s determination absent an abuse of discretion. Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). The district court found that Guardado’s guilty plea was not the product of threats or coercion, but entered freely and voluntarily. The district court’s finding of fact is supported by substantial evidence. Therefore, we conclude the district court did not abuse its discretion by finding that Guardado entered his plea voluntarily, knowingly, and intelligently.

Fourth, Guardado contends that the district court abused its discretion by finding that his testimony regarding his claim that he “was led to believe” he could withdraw his guilty plea was not credible. “[T]he district court is in the best position to adjudge the credibility of the witnesses and the evidence, and unless this court is left with the definite


and firm conviction that a mistake has been committed, this court will not second-guess the trier of fact.” Rincon v. State, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (internal quotation marks omitted). We have reviewed the evidentiary hearing transcripts and we are not convinced that the district court made a mistake.

Having considered Guardado’s contentions and concluded that he is not entitled to relief, we


ORDER the judgment of the district court AFFIRMED.¹


_____, J.

Cherry


_____, J.

Saitta


_____, J.

Gibbons

cc: Hon. Brent T. Adams, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk
Ernest Jord Guardaro

¹We have reviewed all documents that Guardaro has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.