

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISIDRO VILLANUEVA,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS AND THE STATE
OF NEVADA,
Respondents.

No. 52922

FILED

FEB 03 2010

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). Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The district court convicted appellant Isidro Villanueva of one count of lewdness with a child under the age of fourteen years pursuant to his guilty plea. Later, the district court determined that Villanueva was deprived of his right to an appeal, allowed Villanueva to pursue his direct appeal claims in a post-conviction petition filed pursuant to Lozada, and denied the petition. This appeal followed.¹

First, Villanueva contends that the Lozada remedy is inadequate as a matter of law because the process results in an

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

unconscionable delay, the district court sits in judgment of itself, and appointed counsel is not required to be effective counsel within the meaning of the Sixth Amendment. We disagree and conclude that Villanueva 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).

Second, Villanueva contends that NRAP 3C chills the constitutional right to a direct appeal because it forces 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.

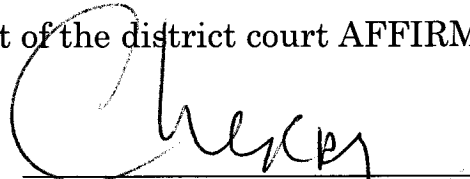
Third, Villanueva contends that application of the lifetime supervision provisions under NRS 176.0931 is unconstitutional because it violates the Equal Protection Clause and the constitutional right to travel, and that application of the lifetime supervision and parole conditions under NRS 213.1243, NRS 213.1245, and NRS 213.1255 is unconstitutional because they infringe upon First Amendment rights. However, the specific conditions of lifetime supervision and conditions of parole will not be determined until after a hearing conducted just prior to

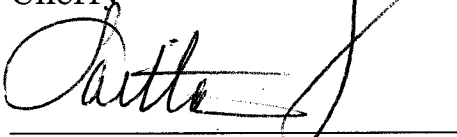
parole or expiration of the term of imprisonment. We decline to speculate on the effects of conditions not yet defined or that may never materialize, see NRS 213.1243(9); NRS 213.1245(3); NRS 213.1255(4).

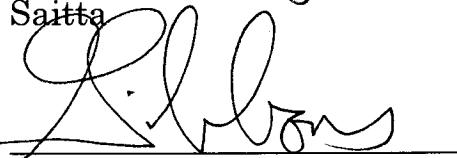
Fourth, Villanueva contends that the district court's failure to notify him of the sex offender registration requirements as required by NRS 176.0927(1) invalidated his previously entered guilty plea. A guilty plea is invalid if the defendant pleaded guilty without knowledge of the direct consequences of his plea. Nollette v. State, 118 Nev. 341, 344, 46 P.3d 87, 89 (2002). However, the registration requirements of NRS 176.0927 are not a direct consequence of Villanueva's plea. Id. at 345-46, 46 P.3d at 89-91. Therefore, Villanueva has not demonstrated that his plea is invalid.

Having considered Villanueva's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

 J.

Cherry
 J.

Saitta
 J.

Gibbons

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