

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADOLFO BENNY CARRERAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53014

FILED

MAR 11 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 appellant Adolfo Benny Carreras' timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

First, Carreras contends that the district court erred by finding that his guilty plea was entered knowingly, intelligently, and voluntarily because "[h]e was in no condition to enter a guilty plea" and defense counsel did not conduct an adequate investigation. "[W]e will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion." Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The district court found that Carreras was competent when he pleaded guilty and that defense counsel "testified credibly that he had investigated thoroughly, had met with an expert concerning a mens rea defense and was prepared to proceed to trial when Carreras insisted on pleading guilty." The record supports this finding and repels Carreras' contention that his guilty plea was entered unknowingly, unintelligently, and involuntarily.

Second, Carreras contends that counsel was ineffective for advising him to enter the guilty plea because he could not form the specific intent required for attempted murder. A petitioner is not entitled to relief when his allegations are belied or repelled by the record. See NRS 34.770(2); Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). The record reveals that counsel testified that he did not advise Carreras to plead guilty, Carreras testified that he made the decision to plead guilty and counsel did not “push” him to make that decision, and the district court found that counsel’s testimony was credible. Because the record belies Carreras’ allegation, we conclude that he is not entitled to relief.

Third, Carreras contends that the district court’s decision to deny his habeas petition after depriving him of public funding for a mental health expert was an abuse of discretion. We will not reverse a district court’s denial of an expert’s services at public expense if the defendant has failed to demonstrate that the expert’s services are reasonably necessary. See NRS 7.135; Gallego v. State, 117 Nev. 348, 369-70, 23 P.3d 227, 242 (2001); Widdis v. Dist. Ct., 114 Nev. 1224, 1229, 968 P.2d 1165, 1168 (1998). The district court found that a mental health expert was not reasonably necessary because it had first-hand knowledge of Carreras’ cognitive acts and mental state, counsel had fully and appropriately investigated Carreras’ mental health conditions, and Carreras was competent when he pleaded guilty. The district court’s findings are supported by the record, its decision to deny public funding did not constitute error, and its denial of this claim was not an abuse of discretion.

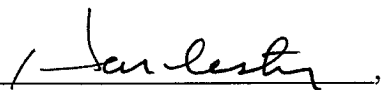
Fourth, Carreras contends that the district court deprived him of due process by refusing to authorize public funding for a ballistics expert. The district court found that a ballistics expert was not reasonably

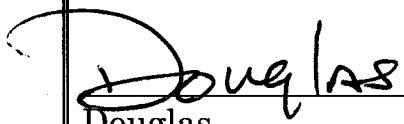
necessary because Carreras voluntarily admitted to using a firearm against the police officer. The district court's finding is supported by the record and we conclude that its decision to deny the request for funding did not constitute error.


Fifth, Carreras contends that the Lozada remedy is inadequate as a matter of law. In Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994), we held that the appropriate remedy for a defendant who was denied his right of appeal is to allow him the opportunity to raise his appellate issues in a petition for a writ of habeas corpus. The district court found that Carreras was not deprived of an appeal and Carreras has not demonstrated that the district court's finding is wrong. Accordingly, Carreras is not entitled to the Lozada remedy and we decline to address the remedy's adequacy.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

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