

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN TRUJILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54134

FILED

MAY 07 2010

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

ORDER AFFIRMING AND REMANDING

This is an appeal from a district court order denying appellant Justin Trujillo's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

First, Trujillo contends that the district court abused its discretion by finding that counsel was not ineffective for advising him to plead guilty. Trujillo claims he had a valid alibi defense and that he would have proceeded to trial if he had known the State would not honor the plea bargain and recommend probation.

When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are 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). Here, the district court found that trial counsel was not deficient and that the State did not breach the plea agreement. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Sullivan v. State, 115 Nev. 383, 389-90, 990 P.2d 1258, 1262 (1999). The district court's findings are supported by

substantial evidence and are not clearly wrong, and Trujillo has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not abuse its discretion.

Second, Trujillo contends that the prosecutor committed misconduct by violating his rights pursuant to (1) Miranda v. Arizona, 384 U.S. 436 (1966), by interviewing him, after he pleaded guilty, without counsel being present and (2) Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose “inculpatory” information related to the plea negotiations. Although the district court considered and rejected these claims on the merits, we note that they fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea and should have been rejected on that basis alone. See NRS 34.810(1)(a); Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm an order that reaches correct result, even if based upon an incorrect ground).

Finally, we note that the judgment of conviction contains an error and states that Trujillo was convicted of conspiracy to commit murder with a deadly weapon when, in fact, he pleaded guilty to conspiracy to commit murder with the gang enhancement. Therefore, we remand the matter to the district court for the entry of a corrected judgment of conviction following the issuance of the remittitur. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur). Accordingly, we

ORDER the judgment of the district court AFFIRMED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Steven R. Kosach, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk