

IN THE SUPREME COURT OF THE STATE OF NEVADA

GIOVANNI VALERIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54682

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In his petition filed on May 21, 2009, appellant claimed that his counsel for his petition filed pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994), was ineffective for failing to contact him to discuss claims. Because Lozada counsel had been appointed to assist appellant in raising direct appeal claims, appellant's claim of ineffective assistance of Lozada counsel must be addressed as a claim of ineffective assistance of appellate counsel. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

prejudice such that the omitted issue would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellant failed to identify any claims that he wished to have counsel raise in his Lozada petition. Accordingly, appellant failed to demonstrate a reasonable likelihood of success had counsel contacted him to discuss claims. Therefore, appellant failed to demonstrate that he was entitled to relief.²

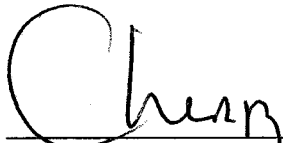
Next, appellant claimed that the Lozada remedy is an inadequate remedy and that his trial counsel failed to file a timely notice of appeal from the judgment of conviction. These claims were already considered by this court in the proceedings for appellant's Lozada petition. The doctrine of law of the case prevents further litigation of these issues and cannot be avoided by more detailed and precisely focused arguments.


²The district court denied his claim of ineffective assistance of Lozada counsel as procedurally barred. As this claim was raised less than one year after the issuance of the remittitur from the denial of appellant's Lozada petition on June 17, 2008, the district court should have considered this claim on the merits pursuant to NRS 34.726(1). Valerio v. State, Docket No. 50359 (Order of Affirmance, May 20, 2008). However, we conclude that the district court reached the correct result in denying this claim, and therefore, we affirm the decision of the district court to deny relief. See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (noting that a correct result will not be reversed simply because it is based on the wrong reason).

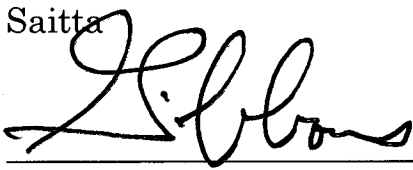
Following the denial of the petition, the district court ordered the May 21, 2009, petition to be stricken from the record. As the district court filed an order denying the petition, the petition should be maintained in the district court's case file and we direct the clerk of the district court to file appellant's post-conviction petition nunc pro tunc to May 21, 2009.

See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Giovanni Valerio
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents that appellant 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. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.