

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN LUIS GONZALEZ-ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56101

FILED

DEC 13 2010

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

ORDER OF REVERSAL AND REMAND

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 February 18, 2010, appellant claimed that his trial counsel was ineffective for failing to ensure that he received approximately seven months of presentence confinement for time spent in Canada awaiting extradition. Appellant further claimed that his counsel was ineffective for failing to perfect an appeal to raise the issue of presentence credits. The district court denied the petition finding that the 513 days of credit appellant received included the time spent awaiting extradition from Canada and that counsel was not ineffective regarding credits. This finding underpinned the district court's determination that appellant had not received ineffective assistance of counsel.

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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

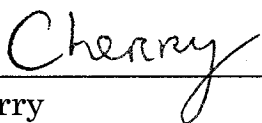
To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Further, trial counsel has a duty to advise a defendant about an appeal when the "defendant may benefit from receiving the advice, such as the existence of a direct appeal claim that has a reasonable likelihood of success." Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). A petitioner is entitled to an evidentiary hearing when he raises claims supported by specific facts that, if true, would have entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

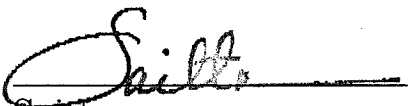
The record on appeal does not support the district court's finding regarding the 513 days of credit. Examining the minutes, it appears that appellant was in custody in Canada as of February 1, 2008, but the presentence investigation report, which lists the custody dates that encompass the 513 days of credit, do not include February 1, 2008.² The parties, at the sentencing hearing, refer to appellant having spent months in custody in Canada awaiting extradition. If appellant was in custody in Canada solely pursuant to the charges in the instant case, appellant is entitled to presentence credit for that period of time. Nieto v. State, 119 Nev. 229, 231, 70 P.3d 747, 748 (2003).

²Appellant received 3 days of credit for time served in 2005 and 106 days for time served in 2006. Appellant further received 404 days of credit for time served from February 22, 2008, through April 2, 2009.

Because appellant's claim for additional presentence credits is not belied by the record on appeal, we remand this matter for an evidentiary hearing to determine whether appellant was in custody in Canada solely pursuant to the Nevada charges, and if so, for how long.³ If the district court determines that trial counsel was ineffective for failing to ensure that appellant received the full amount of credit, the district court should amend the judgment of conviction to provide appellant with the credits. If the district court determines that trial counsel was ineffective for failing to perfect an appeal to raise the issue of the presentence credits, the district court should provide the remedy set forth in NRAP 4(c). Accordingly, we

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


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

³The district court should appoint counsel to assist appellant in the proceedings below. NRS 34.750(1).

cc: Hon. Jackie Glass, District Judge
Juan Luis Gonzalez-Alvarez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk