

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILAGROS ROSARIO RAYRAY A/K/A
MILAGROS RAYRAY A/K/A MILAGROS
SURATOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56980

FILED

MAY 10 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant Milagros Rosario Rayray's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Rayray contends that the district court erred by rejecting her claim that the trial court improperly "ignored" her proper person motion for substitution of counsel. We disagree. The district court found, among other things, that Rayray failed to demonstrate both cause for failing to raise the issue at the appropriate time and actual prejudice. See Evans v. State, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001). Additionally, Rayray waived this issue by pleading guilty and failing to raise it on direct appeal, and it falls 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. See NRS 34.810(1)(a); NRS 174.035(3); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State,


115 Nev. 148, 979 P.2d 222 (1999); see also Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (“If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.”). Therefore, we conclude that the district court did not err by rejecting this claim.

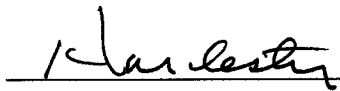
Second, Rayray contends that the district court abused its discretion by denying her habeas petition without conducting an evidentiary hearing because ineffective assistance of counsel led her to enter an invalid guilty plea. Rayray claims that the failure to provide the certificate of counsel in the plea memorandum, see NRS 174.063(2), demonstrates that counsel failed to adequately advise her about the nature and consequences of her guilty plea. We disagree.

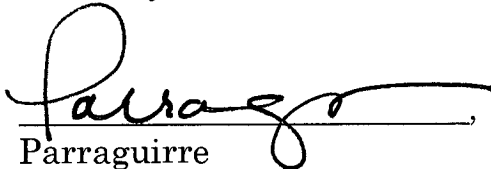
When reviewing the district court’s resolution of an ineffective-assistance claim, we give deference to the court’s factual findings if supported by substantial evidence and not clearly erroneous but review the court’s application of the law to those facts *de novo*. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court rejected Rayray’s claim without an evidentiary hearing and found that it was not pleaded with the requisite factual specificity. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Our review of the record reveals that Rayray’s claim was repelled by the record, see id.; Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002), and she entered her plea knowingly, voluntarily, and intelligently, see Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Therefore, we conclude that the district court did not err by rejecting this claim. See Sparks v. State, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (failure to substantially comply with NRS 174.063 will not invalidate a

guilty plea “provided that the totality of the circumstances indicates that the guilty plea was knowing, voluntary and intelligent”); see also Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Glynn B. Cartledge
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk