

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS VALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59041

FILED

MAR 07 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angelat*
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; Joseph T. Bonaventure, Senior Judge.

On July 15, 2008, appellant entered a guilty plea to one count of first-degree kidnapping with the use of a deadly weapon and two counts of conspiracy to commit battery. The district court sentenced appellant to serve 364 days for the two conspiracy counts, suspended the sentence and placed appellant on probation for a period of three years. The district court stayed adjudication of the kidnapping count.² The district court entered a written judgment memorializing its decision on February 3, 2009.

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).

²Pursuant to the terms of the plea agreement, if appellant successfully completed probation, he would be allowed to withdraw his guilty plea to first-degree kidnapping and enter a plea to a misdemeanor count of disorderly conduct.

While he was on probation, appellant was arrested and charged in three separate cases. Consequently, the State sought to revoke his probation.³ Appellant filed a countermotion to withdraw his guilty plea, arguing that he did not understand the ramifications of his guilty plea agreement—including that he would be sentenced for the first-degree kidnapping count if he committed any violations while on probation. Appellant claimed that his counsel was ineffective in negotiating a plea that allowed the first-degree kidnapping count to remain active. During the hearing on the motion, appellant further suggested that a language barrier invalidated the voluntary and knowing nature of his guilty plea. After conducting a hearing on the motion, the district court denied appellant's motion to withdraw his guilty plea, finding that appellant entered his plea with "an understanding of the potential consequences if he did not make it successfully through probation," and that the deal was to appellant's benefit given the original charges and the potential immigration consequences. The district court further found that appellant failed to demonstrate that an alleged language barrier prevented him from understanding the terms of the plea agreement. The district court subsequently revoked appellant's probation and sentenced appellant to serve a term of 5 to 40 years for the kidnapping count and a consecutive term of 12 to 36 months for the deadly weapon enhancement, and the district court executed the original terms imposed for the conspiracy counts. The district court entered a written order revoking

³In addition, appellant was also classified as an absconder due to a failed home contact, he was in violation for not maintaining continuous employment, and he was argumentative with officials from the Department of Parole and Probation.

probation and amending the judgment of conviction on August 19, 2010.⁴ Appellant appealed the order revoking probation and amending the judgment of conviction, arguing that the district court erred in denying his motion to withdraw a guilty plea. This court affirmed the order of the district court. Velez v. State, Docket No. 56852 (Order of Affirmance, June 8, 2011).⁵

In a petition for a writ of habeas corpus filed on April 4, 2011, appellant claimed that his counsel was ineffective and that his plea was invalid. Relying on the February 3, 2009 judgment of conviction, the district court denied the petition as procedurally barred.

Based upon our review of the record on appeal, we conclude that the district court erred in denying the petition as procedurally barred. The February 3, 2009 judgment of conviction was not a final judgment of conviction as it stayed adjudication of the kidnapping count. Because a final judgment of conviction was not entered until August 19, 2010, and because the remittitur from the appeal involving that order and judgment issued on July 5, 2011, appellant's petition was timely filed pursuant to NRS 34.726(1). Nevertheless, because the district court reached the correct result in denying the petition, we affirm the denial of the petition for the reasons discussed below. See Wyatt v. State, 86 Nev. 294, 298, 468

⁴Because the term of 5 to 40 years exceeded the statutory limit for first-degree kidnapping where the victim does not suffer substantial bodily harm, NRS 200.320(2), the district court resentenced appellant to a term of 5 to 15 years for kidnapping and a consecutive term of 1 to 15 years for the deadly weapon enhancement. The amended judgment of conviction was entered on November 2, 2010.

⁵The documents before this court indicate that appellant has spelled his last name as Velez and Valez.

P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

In his petition, appellant claimed that he received ineffective assistance of counsel. 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). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697.

Appellant claimed that his trial counsel was ineffective for advising him to enter a guilty plea that allowed the kidnapping count to remain pending, for informing him that he would get probation on the kidnapping count, and for not having the documents properly interpreted given the language barrier. This court considered and rejected the challenge to the validity of his guilty plea in his appeal from the order revoking probation and amending the judgment of conviction, specifically concluding that the district court did not err in denying his motion to withdraw the guilty plea as the plea was favorable, trial counsel testified convincingly that he explained the negotiations to appellant, and the record belied appellant's language-barrier claim. The doctrine of the law of the case prevents further litigation of these claims and cannot be avoided by a more detailed and precisely focused argument made upon reflection of the prior proceedings. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

Next, appellant claimed that his counsel was ineffective for failing to challenge the multiple judgments of conviction entered in this case. Appellant failed to demonstrate that he was prejudiced. The State filed a motion for resentencing based on the fact that the sentence for the kidnapping count exceeded the statutory maximum, and appellant's counsel challenged the August 19, 2010 order and judgment on appeal. Appellant failed to demonstrate by a reasonable probability that the results of his appeal would have been different had counsel raised additional arguments relating to the multiple judgments of conviction on appeal.⁶


Next, appellant claimed that his counsel was ineffective for failing to file an appeal: (1) after his guilty plea was entered, (2) after the judgment of conviction was amended the first time, (3) after the judgment of conviction was amended the second time, and (4) after the denial of his motion to withdraw a guilty plea. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. First, counsel did appeal from the August 19, 2010 order revoking probation and amending the judgment of conviction and the intermediate decision of the

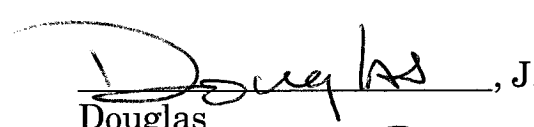
⁶To the extent that appellant claimed that counsel should have argued that the State breached the plea agreement by arguing for a term of 5 to 40 years at the first sentencing hearing on the kidnapping count because the plea agreement did not inform him of this potential penalty, appellant failed to demonstrate that he was prejudiced. The guilty plea agreement informed appellant that he faced a potential term of life with the possibility of parole. Because appellant entered a guilty plea with the understanding that he could be sentenced to the greater term, appellant cannot demonstrate that he was prejudiced by the State arguing for a lesser term not specified in the plea agreement. Further, as discussed earlier, the district court ultimately resentenced appellant to a term within the parameters of NRS 200.320(2), also lesser than that included in the guilty plea agreement.

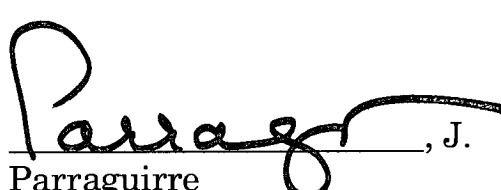
district court to deny the motion to withdraw a guilty plea. Because the August 19, 2010 order and judgment represented the final judgment of conviction in this case, no appeal could have been taken from the order entered on February 3, 2009. Appellant failed to demonstrate that counsel had a duty to file an appeal from the second amended judgment of conviction as he did not allege that he requested an appeal or expressed dissatisfaction. Toston v. State, 127 Nev. ___, ___ P.3d ___ (Adv. Op. No. 87, December 29, 2011); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

Finally, appellant claimed cumulative error should have provided him relief, but for the reasons discussed above, appellant failed to demonstrate that he was entitled to relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Parraguirre

⁷We 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.

cc: Chief Judge, The Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Carlos Valez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk