

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MEDINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59491

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jose Medina's post-conviction motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

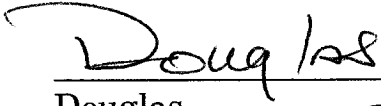
Medina contends that the district court erred by denying his motion after determining that the Supreme Court's holding in Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473 (2010), does not apply retroactively. The State responds that the district court reached the right result but should have applied the equitable doctrine of laches and declined to consider the motion on its merits.

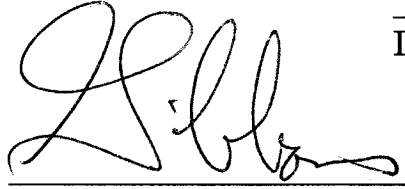
Medina's motion to withdraw alleged that trial counsel affirmatively misadvised him regarding the immigration consequences of his plea and relied upon Padilla for the proposition that affirmative misadvice regarding immigration consequences constitutes deficient performance under Strickland v. Washington, 466 U.S. 668 (1984). He then asserted that the rule in Padilla applies retroactively to his case. Medina's reliance on Padilla was misplaced, however, because this court held, prior to the issuance of Padilla, that an affirmative misrepresentation regarding immigration consequences can support a claim of ineffective assistance of counsel. See Rubio v. State, 124 Nev.

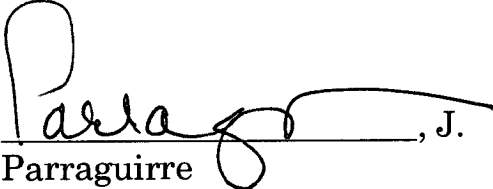
1032, 1043, 194 P.3d 1224, 1232 (2008). Therefore, the district court need not have addressed whether Padilla applies retroactively.

Nevertheless, we conclude that the district court reached the correct result when it denied Molina's motion, albeit for the incorrect reason. See Picetti v. State, 124 Nev. 782, 790 n.14, 192 P.3d 704, 709 n.14 (2008). Even assuming that Medina could overcome laches and counsel was deficient, he was not entitled to relief because he failed to sufficiently allege prejudice. See Strickland, 466 U.S. at 687-88; Kirksey v State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). In exchange for his guilty plea in this case, the State agreed to dismiss another, unrelated charge. Although Medina implied that he could have negotiated a guilty plea to the unrelated charge so as to avoid adverse immigration consequences, he did not allege that the State would have offered such a plea if Medina took the instant charges to trial, or that he would have gone to trial in this case if no plea agreement was offered in the unrelated case. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Jerome T. Tao, District Judge
Reza Athari & Associates, PLLC.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk