

IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR VASQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59705

FILED

JAN 16 2013

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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

On March 31, 2007, appellant Hector Vasquez shot his estranged girlfriend and subsequently pleaded guilty to first-degree murder, first-degree kidnapping, and battery with the intent to kill. Vasquez filed a post-conviction petition with the district court, claiming that he was denied the effective assistance of counsel when he entered these pleas. On appeal, Vasquez argues that the district court erred by denying his post-conviction petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, Vasquez argues that counsel was ineffective for advising him to plead guilty to first-degree murder because there was no evidence of premeditation. NRS 200.010, 200.030. Counsel testified at the evidentiary hearing that he firmly believed Vasquez would be found guilty at trial and could possibly receive two life sentences. Candid advice about the potential outcome at trial is not deficient performance. Moreover, the record reflects evidence of premeditation and Vasquez received a benefit by pleading guilty. Because Vasquez failed to demonstrate that counsel was deficient or that he was prejudiced, we conclude that the district court did not err in denying this claim.

Second, Vasquez argues that counsel was ineffective for advising him to plead guilty to kidnapping and battery with the intent to kill because there was no evidence to support kidnapping and battery with intent to kill is a lesser-included offense of first-degree murder. As noted during the guilty plea canvass and testified to by counsel at the evidentiary hearing, the charges were not intended to be factual and were included for the purpose of obtaining a sentence of 25 to 30 years rather than the possible two life sentences that accompanied the original charge and enhancement. The record reflects that Vasquez was aware of the fictitious nature of the charges and that he received a benefit by pleading guilty to them rather than proceeding to trial on the original charge. Because Vasquez failed to demonstrate that counsel was deficient or that he was prejudiced, we conclude that the district court did not err in denying this claim.

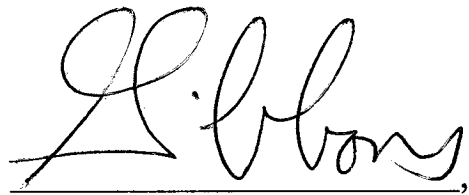
Third, Vasquez argues that counsel was ineffective because counsel never fully explained to him that two of the counts were fictitious. Similarly, Vasquez claims that counsel did not explain to him that by pleading guilty he was waiving his right to a preliminary hearing on the

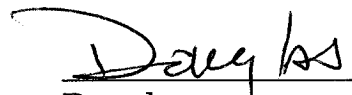
two fictitious counts and other consequences of pleading guilty. Having considered the record, we conclude that the district court did not err in finding that Vasquez was aware of the fictitious nature of the counts and the consequences of pleading guilty. Counsel's testimony, as well as the guilty plea agreement and canvass, demonstrate that Vasquez was aware of the guilty plea and its consequences. Because Vasquez failed to demonstrate that counsel was deficient or that he was prejudiced, we conclude that the district court did not err in denying this claim.

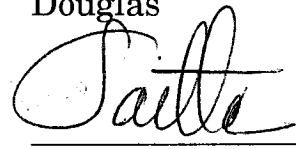
Fourth, Vasquez argues that counsel's errors, considered cumulatively, warrant relief. Because Vasquez failed to establish that counsel was ineffective on any of the grounds that he established, there are no errors to cumulate.

Having considered Vasquez' contentions and concluded that none warrant relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Stefany Miley, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk