

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO R. ESPINO A/K/A
EDUARDO R. RIVERA-ESPINO A/K/A
EDUARDO RIVERAESPINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60143

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Eduardo R. Espino's post-conviction motion to vacate his guilty plea and conviction and/or modify his sentence. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

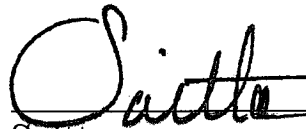
Espino contends the district court erred by not concluding that he was prejudiced by counsel's failure to advise him about the adverse immigration consequences of his guilty plea. Citing to Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473 (2010), for support and urging this court to give its holding retroactive application, Espino claims that ineffective assistance of counsel resulted in a manifest injustice entitling him to withdraw his guilty plea. See NRS 176.165 (a district court may grant a post-conviction motion to withdraw a plea in order to "correct manifest injustice"); see also Hill v. Lockhart, 474 U.S. 52, 59-60 (1985); Strickland v. Washington, 466 U.S. 668, 687 (1984); Rubio v. State, 124 Nev. 1032, 1039-1040, 194 P.3d 1224, 1228-29 (2008). We disagree.

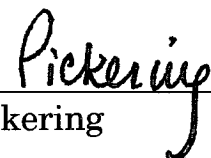
At the hearing on Espino's motion, the district court stated that its "inclination is to say" that Padilla does not apply retroactively. The district court also determined that Espino was not entitled to relief

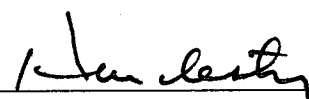
based on ineffective assistance of counsel because, “even assuming” the issue of immigration consequences was not discussed, there were “very obvious benefits from the negotiation that he had” and he therefore failed to demonstrate prejudice. The district court’s order summarily denied Espino’s motion and contained no findings of fact or conclusions of law.

Even assuming Padilla applies retroactively and laches does not preclude consideration of Espino’s motion on the merits, see Hart v. State, 116 Nev. 558, 563-65, 1 P.3d 969, 972-73 (2000) (“[C]onsideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown ‘manifest injustice’ that would permit withdrawal of a plea after sentencing.”), we conclude that Espino is not entitled to relief because he failed to demonstrate prejudice. See Strickland, 466 U.S. at 687-88; Kirksey v State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). As the district court noted at the hearing on his motion, Espino was facing “substantial charges” and, in exchange for his guilty plea, received a substantial benefit from the plea negotiations, including the dismissal of numerous additional charges. See Padilla, 559 U.S. at ___ n.12, 130 S. Ct. at 1485 n.12 (recognizing that “it is often quite difficult for petitioners who have acknowledged their guilt to satisfy Strickland’s prejudice prong”). We conclude that the district court did not err by denying Espino’s motion, see Rubio, 124 Nev. at 1039, 194 P.3d at 1229, and we

ORDER the judgment of the district court AFFIRMED.


Saitta _____, J.


Pickering _____, J.


Hardesty _____, J.

cc: Hon. Valerie Adair, District Judge
Law Offices of Anthony D. Guenther, Esq.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk