

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO PIMENTEL CONTRERAS,
Appellant,
vs.
JACK PALMER, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 64978

FILED

OCT 16 2014

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Antonio Pimentel Contreras' post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Contreras contends that the district court erred by denying his petition, which included claims of ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, 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, 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, 988, 923 P.2d 1102, 1107 (1996). We give deference to the district 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).

First, Contreras contends that the district court erred by denying his claim that counsel was ineffective for failing to suppress statements made in his second interview with law enforcement. The evidence in this case was discovered after a search warrant was executed on a bar Contreras owned. During execution of the warrant, Contreras made inculpatory statements, and sometime later, he made additional inculpatory statements. Counsel attempted to suppress the statements made during execution of the warrant, but was unsuccessful. Accordingly, the district court concluded there was not a reasonable likelihood that suppressing the statements made in the second interview would have caused Contreras to reject the plea. We agree and conclude that the district court did not err by denying this claim. *See Hill*, 474 U.S. at 58-59.

Second, Contreras contends that the district court erred by denying his claim that counsel was ineffective for operating under a conflict of interest because counsel had previously represented the informant who supplied the information for the warrant. The district court concluded that this did not rise to the level of an actual conflict because Contreras failed to demonstrate that counsel refrained from taking a particular action as a result of the prior representation. *See Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (explaining that a defendant must demonstrate “[a]n actual conflict of interest which adversely affect[ed] a lawyer’s performance” in order to establish a violation of the right to counsel); *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). We agree and conclude that the district court did not err by denying this claim.

Third, Contreras contends that the district court erred by denying his claim that counsel was ineffective for failing to move for a sentence reduction pursuant to NRS 453.3405(2) (permitting the district court to reduce a defendant's sentence if he rendered "substantial assistance" to law enforcement). At the evidentiary hearing, testimony was presented that Contreras provided law enforcement with the names of his customers and nicknames of his suppliers. Counsel encouraged Contreras to provide more information, but Contreras was unwilling or unable to do so, and law enforcement declined to work with him further. The district court concluded that Contreras failed to demonstrate deficiency because it was reasonable for counsel not to move for a sentence reduction under the circumstances, and he failed to demonstrate prejudice because there was not a reasonable likelihood that the sentence would have been reduced. *See* NRS 453.3405(3) (explaining the district court's discretion to determine the value of a defendant's assistance). We agree and conclude that the district court did not err by denying this claim.

Fourth, Contreras contends that the district court erred by denying his claim that counsel was ineffective for misadvising him regarding the minimum term of incarceration he was required to serve before becoming eligible for parole, which rendered his plea invalid. The district court found that counsel misadvised Contreras, but concluded that no relief was warranted because he was clearly informed in the guilty plea agreement and during the plea canvass that he had to serve a minimum of ten years before becoming eligible for parole. *See Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (holding that the "mere subjective belief of a defendant as to potential sentence . . . unsupported by any promise from the State or indication by the court, is insufficient to invalidate a

guilty plea as involuntary or unknowing”). Moreover, under the circumstances, Contreras fails to demonstrate that he would have rejected the plea absent counsel’s misadvice. We conclude that the district court did not err by denying this claim.

Fifth, Contreras contends that the district court erred by denying his claim that counsel was ineffective for failing to file a direct appeal. At the evidentiary hearing, both Contreras and counsel testified that Contreras was informed of his right to appeal. After considering their testimony, the district court found that Contreras had not asked for an appeal and concluded that counsel was not obligated to file an appeal under the circumstances. *See Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 800 (2011) (“[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.”). We agree and conclude that the district court did not err by denying this claim.


Sixth, Contreras contends that the district court erred by denying his claim that counsel was ineffective for failing to ensure that he received the correct credit for time served. Contreras asserts that his judgment of conviction should reflect an additional 22 days of presentence credit for the time between the date he was sentenced and the date his judgment of conviction was entered. We conclude that the district court did not err by denying this claim. Although the judgment of conviction is required to set forth “[t]he exact amount of credit granted for time spent in confinement before conviction,” NRS 176.105(1)(d), the time spent in confinement after sentencing and before entry of the judgment of conviction is not time spent in presentence confinement. Rather, all time served after sentencing is time served pursuant to the conviction and is

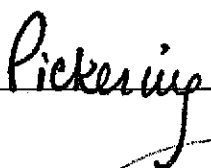
included in the computation of time served. See NRS 176.335(3) (“The term of imprisonment designated in the judgment of conviction must begin on the date of sentence of the prisoner by the court.”). Because the time spent in confinement after sentencing and before entry of the judgment of conviction is not time spent in presentence confinement and a challenge to the computation of time served pursuant to the judgment of conviction must be raised in a post-conviction petition for a writ of habeas corpus, see NRS 34.738(1), (3); *Griffin v. State*, 122 Nev. 737, 741, 137 P.3d 1165, 1167 (2006), counsel was not deficient for failing to ensure that the time spent in confinement after sentencing and before entry of the judgment of conviction was included in the judgment of conviction.


Finally, Contreras asserts that application of NRS 34.810(1)(a) to dismiss an individual claim in a post-conviction petition constitutes an unconstitutional regulation of the writ of habeas corpus. We reject this assertion.

Having considered Contreras’ contentions and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Pickering


_____, J.
Saitta

cc: Hon. Michael Montero, District Judge
Karla K. Butko
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk