

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUADALUPE ROJAS GUZMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70129

FILED

SEP 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a petition for a writ of coram nobis.¹ Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Appellant Guadalupe Rojas Guzman argues the district court erred in denying his January 26, 2016, petition for a writ of coram nobis.² In his petition, Guzman claimed his counsel was ineffective because counsel failed to properly explain the immigration consequences Guzman faced by entering a guilty plea to opening and/or maintaining a place for purpose of selling and/or giving away and/or using a controlled substance. Guzman also asserts the guilty plea agreement was too vague and the

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²We note Guzman also filed a motion to withdraw guilty plea in the district court. Recognizing the relief Guzman sought, we conclude the district court properly considered that motion to be filed in conjunction with Guzman's petition for a writ of coram nobis. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014) (explaining a postconviction motion to withdraw guilty plea is not available as a separate remedy).

district court lacked jurisdiction to order him to cooperate with the Immigration and Customs Enforcement agency as a condition of his probation.

The Nevada Supreme Court has explained that in Nevada state courts, “the writ of coram nobis may be used to address errors of fact outside the record that affect the validity and regularity of the decision itself and would have precluded the judgment from being rendered.” *Trujillo v. State*, 129 Nev. ___, ___, 310 P.3d 594, 601 (2013). “[A]ny error that was reasonably available to be raised while the petitioner is in custody is waived, and it is the petitioner’s burden on the face of his petition to demonstrate that he could not have reasonably raised his claims during the time he was in custody.” *Id.* at ___, 310 P.3d at 601-02. “A claim of ineffective assistance of counsel involves legal error,” and therefore, falls outside the limited scope of a petition for a writ of coram nobis. *Id.* at ___, 310 P.3d at 602.

Guzman’s claims involve legal errors, not errors of fact outside the record, and are accordingly not within the scope of a petition for a writ of coram nobis. Moreover, Guzman fails to demonstrate he could not have raised his claims while he was in custody. Therefore, the district court properly denied the petition.


Guzman also argues the district court erred in applying Nevada’s limited scope to his petition for a writ of coram nobis because he sought to invoke the federal scope for such a petition. Guzman asserts his challenge to the immigration consequences stemming from his guilty plea falls within the scope of a federal petition for a writ of coram nobis. However, the Nevada Supreme Court expressly declined to adopt the


federal approach to the writ of coram nobis, *id.* at ___, 310 P.3d at 601, and therefore, Guzman is not entitled to relief for this claim.

Next, Guzman argues the district court erred by denying the petition without considering his reply to the State's opposition to his petition. Guzman asserts the reply was lost by the mailing system and this matter should be remanded for the district court to consider his reply. As stated previously, Guzman's claims are not within the scope of a petition for a writ of coram nobis and therefore, Guzman cannot demonstrate he was prejudiced by any failure of the district court to consider arguments contained in his reply. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jerome M. Polaha, District Judge
Guadalupe Rojas Guzman
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk