

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEN ROBERTS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73586-COA

FILED

NOV 16 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ken Roberts appeals from a district court order denying a “motion to vacate conviction/petition for postconviction relief act (PCRA) in the alternative motion to suspend/set aside/amend plea” filed on July 2, 2015. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Roberts claims the district court erred by denying his request to withdraw his guilty plea. We disagree.

Roberts filed his motion after federal authorities initiated removal proceedings based on his immigration status and his conspiracy-to-commit-robbery conviction. His motion challenged the validity of his guilty plea, arguing that defense counsel was ineffective for failing to advise him of the immigration consequences of his plea. His motion was filed after he expired his sentence and had been released from custody.

The district court appointed counsel to assist Roberts, conducted an evidentiary hearing on his motion, and determined it was unnecessary to rule on the availability of a post-custody remedy for

18.904680

withdrawing the guilty plea.<sup>1</sup> In denying Robert's motion, the district court made the following findings regarding Roberts' ineffective-assistance-of-counsel claim.

Although counsel was a new attorney when he was appointed to represent Roberts, he had previously represented non-citizen criminal defendants at trial and had negotiated a plea agreement for a non-citizen defendant immediately before representing Roberts. Consequently, the mechanics of a deportation arising from a felony conviction were fresh in counsel's mind when he represented Roberts.

Counsel did not recall specific details about his meetings with Roberts, but he was certain he did not tell Roberts not to worry about his immigration status because Immigration and Customs Enforcement had not contacted his office. "[Counsel] was very clear in his testimony that he has a pattern he follows in advising a defendant of the consequences of his plea, including advising the defendant of the potential for removal, deportation, and exclusion from the United States if the defendant is not a citizen." Counsel was certain he followed this pattern when advising Roberts.

Counsel's testimony that he would never tell a defendant he did not have to worry about the immigration consequences of a guilty plea to conspiracy to commit robbery, that he followed a pattern for advising

---

<sup>1</sup>We note that a motion filed pursuant to NRS 34.724(3) provides the only remedy by which people who are not incarcerated may seek the withdrawal of their guilty pleas after sentencing, and we conclude this remedy was not available to Roberts because it was barred by the doctrine of laches. See NRS 34.724(3)(d). Robert's claim was not cognizable in a petition for a writ of coram nobis because his claim of ineffective assistance of counsel involved a legal error. See *Trujillo v. State*, 129 Nev. 706, 719, 310 P.3d 594, 602 (2013).


defendants of the consequences of their pleas, and that he used this pattern when representing Roberts was credible. The only evidence Roberts presented in support of his ineffective-assistance-of-counsel claim was his own testimony. Roberts' testimony regarding his conversations with counsel and counsel's immigration advice was not credible. And "[Roberts] was not under a false understanding as to the possible immigration consequences of his plea."

We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, and Roberts failed to demonstrate he was deprived of effective assistance of counsel. *See Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005); *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Having determined the district court did not err by denying Roberts' motion, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Eric Johnson, District Judge  
The Law Office of Travis Akin  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk