

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE SANTOS MIRANDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37541

FILED

MAR 29 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jose Santos Miranda's petition for a writ of habeas corpus (post-conviction). Miranda raises three arguments on appeal.

First, Miranda argues that his counsel was ineffective in failing to request a psychological examination of the four-year-old victim. We disagree.

To prevail on a claim for ineffective assistance of counsel, "a claimant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense."¹ On review, we avoid the distorting effects of hindsight and afford high deference to a counselor's representation.² A claimant must overcome a presumption that the challenged action may be considered sound strategy.³

We established the test for determining when a court should order a psychiatric examination of a sexual assault victim in Koerschner v.

¹Evans v. State, 117 Nev. ___, ___, 28 P.3d 498, 508 (2001); Strickland v. Washington, 566 U.S. 668, 687 (1984).

²Evans, 117 Nev. at ___, 28 P.3d at 508.

³Id.

State.⁴ In Koerschner,⁵ we held that the overriding consideration in determining whether to conduct a psychological examination is whether there is a compelling reason warranting such an exam. A compelling reason may be found by weighing the following factors: (1) whether the State benefits from a psychological or psychiatric expert; (2) whether there is corroborating evidence beyond the testimony of the victim; and (3) whether there is a reasonable basis for questioning the victim's veracity.⁶

Here, the State did not benefit from a psychological or psychiatric expert. The victim's testimony was corroborated by the testimony of her parents, the testimony of North Las Vegas Police Officer Irene Booth, and the testimony and physical exam performed by Dr. Marc O'Connor. During a pre-trial competency hearing, the victim was extensively questioned. Throughout this questioning, the victim demonstrated that she understood the difference between the truth and a lie. There was no reason to question her mental state or veracity, other than the fact that she was four years old at the time. Given these considerations, we conclude that Miranda has failed to show a compelling reason to believe the court would have granted a motion for a psychological examination. Therefore, we conclude that Miranda's counsel was not ineffective in failing to make such a request.

⁴116 Nev. 1111, 1116, 13 P.2d 451, 455 (2000).

⁵Id.

⁶Id.

Second, Miranda argues that his counsel was ineffective in failing to ensure that Miranda could understand his Spanish-speaking interpreter.⁷ We disagree.

We have held that "[a] criminal defendant has a due process right to an interpreter at all crucial stages of the criminal process."⁸ In Gallimort v. State,⁹ we considered three factors in determining whether a defendant received the assistance of a qualified interpreter. These factors were (1) whether the interpreter was present throughout the trial; (2) whether there were allegations or evidence that the defendant misunderstood testimony; and (3) whether the defendant was able to assist his counsel in providing a defense.¹⁰

Here, although it appears that there was some confusion at the beginning of Miranda's testimony, the record demonstrates that he understood his interpreter, who was present throughout trial. Moreover, of the witnesses called by the State, two of them were the victim and her mother, both members of Miranda's family who testified in Spanish.¹¹

⁷Miranda cites to Chacon v. Wood, 36 F.3d 1459, 1465 (9th Cir. 1994), superseded by statute on other grounds as recognized by Summerlin v. Stewart, 276 F.3d 926, 933 (9th Cir. 2001), to support his argument. However, unlike the facts in Chacon, here, Miranda does not allege that his interpreter mis-characterized any testimony or statements. Therefore, we find the holding in that case factually distinguishable.

⁸Ton v. State, 110 Nev. 970, 971, 878 P.2d 986, 987 (1994).

⁹See 116 Nev. 315, 318, 997 P.2d 796, 798 (2000).

¹⁰Id.

¹¹The State contends that these witnesses testified in Spanish. Although not entirely clear from the record, Miranda does not dispute that these witnesses testified in Spanish.

When Miranda was asked if he heard the victim's testimony, he replied "Yes." In fact, when asked by the district court whether he had any questions, Miranda replied, "Is it necessary for me to testify, or is it enough for my attorney to speak on my defense?" Given the opportunity to speak to the court, Miranda did not give any indication that he was having difficulty with his interpreter. The record reflects that Miranda was able to consult with counsel and assist in his defense.

Additionally, Miranda does not allege any specific instance where he told either the court or his counsel that he could not understand his interpreter. Miranda merely makes broad allegations in his petition. In light of the record, we find these allegations unpersuasive. Accordingly, we conclude that Miranda's counsel was not deficient and Miranda was not prejudiced by any failure of his counsel to ensure that Miranda could understand his interpreter.¹²

Finally, Miranda argues that the court erred by refusing to conduct an evidentiary hearing on the issue of whether Miranda could understand his interpreter. He contends the court should have held a hearing before his claim was denied. We disagree.

We have stated that when a defendant in a petition for post-conviction relief alleges facts outside the record, which, if true, would entitle him to relief, the district court must conduct an evidentiary hearing.¹³ However, we have also stated that "[a] defendant seeking post-conviction relief cannot rely on conclusory claims for relief but must

¹²See Evans, 117 Nev. at ___, 28 P.3d at 508.

¹³Hatley v. State, 100 Nev. 214, 216, 678 P.2d 1160, 1162 (1984).

support any claims with specific factual allegations."¹⁴ A defendant "is not entitled to an evidentiary hearing if the allegations are . . . repelled by the record."¹⁵

Here, Miranda alleged in his petition that counsel failed to ensure that petitioner could understand the interpreters that were present at the trial, preliminary hearing and at all interviews and discussions with the petitioner. Petitioner did not understand the interpreters, as they spoke to [sic] fast and too educated, as petitioner only attended school until age seven (7) and does not have a working knowledge of an educated nature, wherein he could conduct a conversation such as those that were being had by counsel and the court. Moreover, petitioner could not understand what the witnesses were saying while on the witness stand because petitioner could not understand the interpreters.

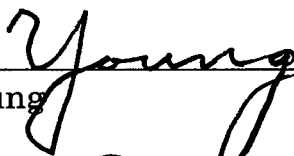
Miranda's allegations that he could not understand his interpreter are conclusory and belied by the record. Even if Miranda's allegations that the interpreter spoke too fast were true, appellant has provided us with no authority that these allegations alone entitle him to relief. Courtroom proceedings often occur at a quick pace. It is the responsibility of an interpreter to translate with as much accuracy as two languages will reasonably allow. In our opinion, this occurred here.

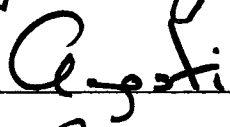
¹⁴Evans, 117 Nev. at ___, 28 P.3d at 507.


¹⁵Id.

Therefore, we conclude that the court did not err by refusing to conduct an evidentiary hearing before denying Miranda's claims. We, accordingly,

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Christopher R. Oram
Clark County Clerk