

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO VILLALOBOS VELOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80991-COA

**FILED**

JUN 07 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Antonio Villalobos Velos appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 15, 2019. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Velos claimed he received ineffective assistance of counsel in regard to entering his guilty plea. To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

First, Velos claimed counsel was ineffective when he counseled Velos to plead guilty to attempted burglary and told him the sentencing range was for a category C felony, one to five years in prison. Velos claimed attempted burglary was a category D felony and subject to a penalty of one

to four years in prison.<sup>1</sup> Velos pleaded guilty to attempted burglary, which is a category C felony. *See* NRS 193.330(1)(a)(3); 2013 Nev. Stat., ch. 488, § 1, at 2987. Thus, counsel correctly informed Velos regarding the category and potential sentences he could receive for attempted burglary. *See* NRS 193.130(2)(c) (providing the sentencing range for category C felonies). Because Velos failed to demonstrate counsel was deficient or resulting prejudice, we conclude the district court did not err by denying this claim.

Second, Velos claimed counsel was ineffective for not being present when the judgment of conviction was signed and entered and that this caused him to lose credits from the time between the oral pronouncement of sentence and the written judgment being filed. There is no requirement that counsel be present when a judgment of conviction is signed and entered. Further, Velos failed to demonstrate he was denied credit from the date of oral pronouncement. Therefore, Velos failed to demonstrate counsel was deficient or resulting prejudice. Accordingly, we conclude the district court did not err by denying this claim.

Third, Velos claimed counsel was ineffective for not explaining the application of statutory credits toward his minimum and maximum sentence for parole purposes prior to advising him to plead guilty. Parole is a collateral consequence of a guilty plea; therefore, counsel was not required to explain the application of credits to his minimum and maximum terms. *See Palmer v. State*, 118 Nev. 823, 826, 830, 59 P.3d 1192, 1194, 1196 (2002). Therefore, Velos failed to demonstrate counsel was deficient or resulting

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<sup>1</sup>To the extent Velos claimed his sentence violated the Ex Post Facto Clause, this claim was outside the scope of a postconviction habeas petition challenging a judgment of conviction entered pursuant to a guilty plea. *See* NRS 34.810(1)(a).

prejudice. Thus, we conclude the district court did not err by denying this claim.

Finally, Velos requested the appointment of counsel, and the district court denied that request. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.* Because the district court granted Velos leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, see NRS 34.745(1), (4), Velos met the threshold requirements for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). However, the district court found that the issues in this matter were not difficult and Velos was able to comprehend the proceedings. See NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. Therefore, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen E. Delaney, District Judge  
Antonio Villalobos Velos  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk