IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO HERNANDEZ-HUERTA A/K/A FRANCISCO HUERTA HERNANDEZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37841

FILED

NOV 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. On June 24, 1999, appellant pleaded nolo contendere[1] to second-degree kidnapping. The district court sentenced appellant to a prison term of 36 to 120 months to run concurrent to a prison term of 48 to 156 months that appellant received in another case. Appellant did not file a direct appeal.

On September 27, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus. In the petition, appellant claimed that his counsel was ineffective in failing to investigate his case and in failing to file an appeal on appellant's behalf or notify appellant of his right to appeal. Without conducting an evidentiary hearing, the district court denied appellant's petition, finding that his claims either

[1]Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

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lacked specificity or were belied by the record. Appellant filed the instant appeal.

Appellant's sole contention on appeal concerns a claim that was neither raised in his petition nor considered by the district court. Appellant claims for the first time on appeal that his nolo contendere plea was infirm because there was no factual basis for his plea. Specifically, appellant claims that there is no factual basis for his plea because the victim recanted her earlier statements implicating appellant in the charged crime. Generally, this court will not review an issue that was not part of appellant's post-conviction petition and was not considered by the district court.[2] Accordingly, we need not consider appellant's contention. Notwithstanding our holding in Davis, we further conclude that appellant's claim that there was no factual basis for his plea is belied by the record.

At appellant's plea canvass, the State offered to prove that appellant battered his wife, and then forcibly took her from her apartment to a hotel room where he stole $300.00 from her and kept her prisoner for an extensive period of time. The State represented that it would prove the case against appellant by presenting evidence of the victim's videotaped statement describing the assault, as well as corroborating evidence of other witnesses who observed the kidnapping. Although the State conceded that the victim had recanted most of her statement at the preliminary hearing, the State felt that the jury might not believe the victim's recantation and that there were sufficient witnesses to corroborate the victim's original statement. Accordingly, there was a sufficient factual basis for appellant's nolo contendere plea.

Although not raised on appeal, appellant claimed in the petition that his counsel was ineffective in failing to investigate and in

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[2]See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991).

failing to notify him of his right to appeal. Appellant has apparently abandoned these issues on appeal, except to state that the district court erred in failing to conduct an evidentiary hearing on them. Because appellant fails to make any cogent argument with respect to his counsel's ineffectiveness, we conclude that appellant has not demonstrated that the district court erred as a matter of law in denying his petition.[3]

Accordingly, having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young

Agosti, J.
Agosti

Leavitt, J.
Leavitt

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Gregory L. Denue
Clark County Clerk

[3]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).