

IN THE SUPREME COURT OF THE STATE OF NEVADA

FELIPE G. GALEANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39027

FILED

FEB 03 2001

CLERK OF SUPREME COURT
J. Richard
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ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from a district court order denying appellant Felipe G. Galeana's post-conviction petition for a writ of habeas corpus.

On May 31, 2000, Galeana was convicted, pursuant to a guilty plea, of one count of incest. The district court sentenced Galeana to serve a prison term of 48 to 120 months. Galeana appealed, and this court dismissed his appeal from the judgment of conviction.¹

On September 18, 2001, Galeana filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition, and Galeana filed a reply to the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Galeana or to conduct an evidentiary hearing. On December 14, 2001, the district court denied the petition.

¹Galeana v. State, Docket No. 36216 (Order Dismissing Appeal, October 24, 2000).

In the petition, Galeana raised several claims of ineffective assistance of counsel. In order to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.² A petitioner must also demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.³ A petitioner is not entitled to an evidentiary hearing on claims that fail for lack of specificity or on claims that are belied by the record.⁴

First, Galeana contended that his guilty plea was not knowing and voluntary and his trial counsel was ineffective because he was not advised of the direct consequence of lifetime supervision. We conclude that the district court erred in rejecting Galeana's claim involving lifetime supervision without conducting an evidentiary hearing.

A petitioner is entitled to an evidentiary hearing on claims not belied by the record that, if true, would entitle him to relief.⁵ Here, we conclude that Galeana's claim that he did not know that lifetime

²Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

³Hill, 474 U.S. at 59.

⁴Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

⁵Id.

supervision would be imposed before pleading guilty, if true, would entitle him to relief. A guilty plea is not knowing and intelligent where the totality of the circumstances revealed by the record demonstrates that the defendant was not aware of the direct consequences of the guilty plea.⁶ In Palmer v. State, this court recently held that lifetime supervision is a direct consequence of a guilty plea, and therefore a defendant must be aware of the lifetime supervision requirement at the time he enters his guilty plea.⁷ Likewise, trial counsel's conduct falls below an objective standard of reasonableness with regard to the guilty plea where he has failed to ensure that the defendant was aware of the direct consequence of lifetime supervision.⁸ Although trial counsel, and the district court, should advise a defendant about lifetime supervision, the failure to do so does not warrant reversal where the record reveals the defendant was advised about lifetime supervision in the plea agreement or in some other manner.⁹

⁶Little v. Warden, 117 Nev. __, __, 34 P.3d 540, 543 (2001).

⁷118 Nev. __, __ P.3d __ (Adv. Op. No. 81, December 19, 2002).

⁸See id. (holding that lifetime supervision is a direct consequence of guilty plea); Nollette v. State, 118 Nev. __, 46 P.3d 87 (2002) (recognizing that trial counsel must ensure that a defendant is aware of the direct consequences of the guilty plea).

⁹See Palmer, 118 Nev. at __, __ P.3d at __.

In the instant case, the record on appeal does not disclose whether appellant was advised of the consequence of lifetime supervision. Accordingly, we conclude that an evidentiary hearing is necessary on this issue to determine whether appellant was aware, at the time he pleaded guilty, that lifetime supervision would be imposed.¹⁰ If appellant was unaware of the direct consequence of lifetime supervision, the district court must allow him to withdraw his plea. Therefore, we reverse the district court's order in part.

Second, Galeana contended that his trial counsel was ineffective for failing to challenge the constitutionality of NRS 201.180, the incest statute. In particular, Galeana contended that the statute was void for vagueness because it failed to sufficiently define the crime of incest and failed to set forth the elements of incest so as to provide notice of the proscribed conduct.¹¹ We conclude the district court did not err in rejecting Galeana's claim.¹²

¹⁰We note that the district court may exercise its discretion and appoint post-conviction counsel to represent Galeana. See NRS 34.750.

¹¹NRS 201.180 defines incest, in part, as "[p]ersons being within the degree of consanguinity within which marriages are declared by law to be incestuous and void . . . who commit fornication or adultery with each other."

¹²Galeana also claimed that appellate counsel was ineffective for failing to raise a void for vagueness claim. We conclude that the district court did not err in rejecting Galeana's claim because he waived his right to appeal that issue by pleading guilty. See *Tollett v. Henderson*, 411 U.S.

continued on next page . . .

“It is settled that statutes are clothed with the presumption of validity and the burden is on those attacking them to show their unconstitutionality.”¹³ The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states “from holding an individual ‘criminally responsible for conduct which he could not reasonably understand to be proscribed.’”¹⁴ But the Due Process Clause “does not require impossible standards of specificity in penal statutes.”¹⁵ The relevant inquiry is whether “there are well settled and ordinarily understood meanings for the words employed when viewed in the context of the entire statutory provision.”¹⁶

In this case, we must examine Galeana's conduct to determine if this test is met, since vagueness must be judged in light of the conduct that is charged where, as here, the statute is not void in all its

... continued

258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (recognizing that, by pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea).

¹³Wilmeth v. State, 96 Nev. 403, 405, 610 P.2d 735, 737 (1980).

¹⁴Sheriff v. Martin, 99 Nev. 336, 339, 662 P.2d 634, 636 (1983) (quoting United States v. Harriss, 347 U.S. 612, 617-18 (1954)).

¹⁵Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975).

¹⁶Id.

applications and does not involve First Amendment freedoms.¹⁷ The State charged Galeana with incest for having sexual intercourse with his fifteen-year-old daughter, which resulted in her pregnancy. The word “incest” has a commonly understood meaning, particularly, it is “sexual intercourse between persons so closely related that they are forbidden by law to marry.”¹⁸ The plain meaning of the word “incest” clearly encompasses Galeana’s conduct because it is generally known that a father may not marry or have sexual intercourse with his child. Since Galeana could have had no reasonable doubt that having sexual intercourse with his daughter was “incest,” an argument that the statute was unconstitutionally vague would have been rejected. Accordingly, trial counsel was not deficient in failing to raise a void for vagueness challenge because such a challenge would not have changed the outcome of the proceeding.

Third, Galeana contended that his trial counsel was ineffective and his guilty plea was invalid because both his trial counsel and the district court failed to ensure there was an adequate factual basis for Galeana’s guilty plea and that Galeana actually committed the crime of

¹⁷City of Las Vegas v. Dist. Ct., 118 Nev. __, __ P.3d __ (Adv. Op. No. 87, Dec. 20, 2002) (holding an as-applied challenge is appropriate where the statute does not implicate First Amendment concerns and where the statute is not void in all its applications).

¹⁸Merriam Webster’s Collegiate Dictionary 587 (10th ed. 1997).

incest. In particular, Galeana contended that, although he admitted to being the victim's father at the plea canvass, his trial counsel and the district court should have further inquired about how Galeana knew he was the victim's father and required evidence of paternity. In the petition, Galeana alleged that he is not certain that he is the victim's father because he knows that the victim's mother was involved with other men at the time of the victim's conception. We conclude that the district court did not err in rejecting Galeana's contention.

The record reveals that there was an adequate factual basis for the plea. In particular, at Galeana's preliminary hearing, several of the victim's friends testified that the victim, Galeana's daughter, had told them her father forced her to have sexual intercourse on numerous occasions and had gotten her pregnant. Additionally, the victim testified that she had sexual intercourse with her father on several occasions. In exchange for Galeana's guilty plea, we note that Galeana received a substantial benefit, namely, the State dropped three counts of sexual assault and two counts of incest. Finally, we note that Galeana's admission, at the plea canvass, to the elements of the crime of incest - that he was the victim's father and that he had sexual intercourse with her - is sufficient evidence to sustain his conviction for incest. The State is relieved from its burden to prove the elements of the crime beyond a

reasonable doubt when the defendant enters a plea of guilty.¹⁹ Accordingly, the district court did not err in rejecting Galeana's claim involving his actual innocence and the factual basis for his plea.

Fourth, Galeana contended that his trial counsel was ineffective at sentencing. Particularly, Galeana contended that his trial counsel failed to: (1) advocate on Galeana's behalf for a lesser sentence; (2) investigate, uncover, and present mitigating evidence; (3) point out errors in the presentence investigation report (PSI); (4) object to the prosecutor's misstatement about Galeana's criminal record; and (5) call numerous character witnesses to testify at the sentencing proceeding. We conclude that Galeana's claims lack merit.

The district court did not err in rejecting Galeana's claim that his counsel was ineffective at sentencing. Galeana's first claim that his trial counsel failed to advocate for a lesser sentence is belied by the record of the sentencing hearing. At that hearing, trial counsel argued that Galeana had accepted responsibility for his actions, was amenable to treatment, and advocated for the best sentence possible, probation. Additionally, Galeana's claim that his trial counsel was ineffective for failing to uncover and present mitigating evidence fails for lack of specificity because Galeana did not identify the type of mitigating evidence

¹⁹See Giese v. Chief of Police, 87 Nev. 522, 525, 489 P.2d 1163, 1164 (1971) (quoting Ex parte Dickson, 36 Nev. 94, 101, 133 P. 393, 396 (1913)).

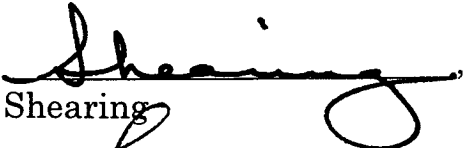
further investigation would have revealed. Likewise, Galeana also failed to demonstrate trial counsel was ineffective for failing to correct errors involving Galeana's criminal record. In fact, in the petition, Galeana failed to allege that he told his counsel about errors in the PSI or his criminal record. Moreover, at the sentencing hearing, although the prosecutor relied on Galeana's criminal history to argue for a harsh sentence, Galeana made no attempt to correct the alleged misstatements of the prosecutor at his allocution. Finally, in light of the nature of the charged crime, Galeana has failed to show he was prejudiced by trial counsel's failure to call character witnesses on Galeana's behalf because, the district court found, even assuming the witnesses testified to Galeana's work ethic and good character, it would not have changed the outcome of the sentencing proceeding.²⁰


Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are not warranted in this matter.²¹ Accordingly, we

²⁰See Strickland v. Washington, 466 U.S. 668 (1984) (holding that to prove ineffective assistance of counsel, a defendant must demonstrate that counsel was deficient, and that the deficient conduct changed the outcome of the proceeding).

²¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²²


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Jackie Glass, District Judge
Felipe G. Galeana
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

²²We have considered all proper person documents filed or received in this matter. We conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.