IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
JUAN FRANCISCO GRANADOS A/K/A JUAN F. GRADADOS,
Respondent.

No. 40047

FILED

AUG 19 2003

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

ORDER OF REVERSAL

This is an appeal from a district court order granting respondent Juan F. Granados' petition for a post-conviction writ of habeas corpus.

On February 3, 2000, Granados was charged with the first-degree kidnapping, sexual assault, and robbery of his girlfriend. Granados, a native of El Salvador, spoke little English and, owing to his lack of education, read little Spanish–his native language. Plea negotiations having been entered with the assistance of a court-appointed translator, Granados initially agreed to waive his right to a preliminary hearing and pleaded guilty to the sexual assault charge. However, based on the possible penalty for sexual assault, Granados changed his mind and decided to go to trial on the original three charges.

On May 22, 2000, the date set for trial, Granados again changed his mind based on a second proffer from the State. Negotiations again having been entered with the assistance of an interpreter, Granados agreed to make an Alford[1] plea as to the first-degree kidnapping charge with the State agreeing to dismiss the sexual assault and robbery charges.

[1]Alford v. North Carolina, 400 U.S. 25 (1970).

Throughout the course of the proceedings and during the plea canvas, Granados had the assistance of an interpreter. Based upon the written plea agreement, which Granados acknowledged had been read to him in Spanish and that he understood, the plea canvass, and the factual representations regarding the offense given by the State, the district court found that Granados' plea was freely, voluntarily, and knowingly made. The district court accepted the plea and sentenced Granados to life imprisonment with the possibility of parole in sixty months for the first-degree kidnapping.

One year later, Granados, through counsel, filed a petition for a post-conviction writ of habeas corpus alleging his plea was involuntary, ineffective assistance of counsel for failure to investigate and inform Granados regarding the terms of the plea agreement, and a violation of his due process rights where the interpreter's office allegedly failed to translate the written plea agreement into written Spanish. The district court granted Granados' writ petition following an evidentiary hearing on the matter. The district court vacated Granados' sentence concluding insufficient evidence was presented demonstrating the interpreter orally translated the plea agreement from English to Spanish and that, based on the totality of the circumstances, Granados did not understand the elements of the charge against him nor the penalty range. Therefore, the district court concluded Granados had not voluntarily entered the plea agreement.

"On appeal from a district court's determination of a plea's validity, this court presumes that the lower court correctly assessed the validity and will not reverse absent a clear showing of an abuse of

discretion."[2] However, a plea of guilty is presumptively valid, and the defendant has the burden of showing that he or she did not enter the plea knowingly and intelligently.[3]

The State argues the district court erred in concluding Granados' plea was not voluntarily entered. The State contends this finding is clearly erroneous in light of the evidence presented at the evidentiary hearing and the record on the plea canvass. We agree.

The district court's finding that plea agreement was not read to Granados is belied by the record and not supported by substantial evidence. Post-plea statements by a defendant that he did not understand a plea canvass that are belied by the record are not grounds for invalidating a plea.[4] The record reflects that during the plea canvass the district court that accepted the plea asked Granados if the plea agreement had been read to him in Spanish and if he understood everything in it. Granados answered yes to both questions. In addition, Granados acknowledged an interpreter also translated the information into Spanish. During the post-conviction hearing, Granados testified initially that the plea agreement was not translated, but on cross-examination, Granados admitted it was translated, but that he did not understand it and no one

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[2]State v. Gomes, 112 Nev. 1473, 1478, 930 P.2d 701, 705 (1996). Cf. Torrey v. Estelle, 842 F.2d 234, 235 (9th Cir. 1988) (stating "[f]actual findings underlying a court's conclusion of voluntariness are given deference in a habeas proceeding and reviewed for clear error on appeal [but] [d]eference is not accorded to a state court's determinations of mixed questions of law and fact or of purely legal questions, and thus the ultimate question of voluntariness is reviewed de novo").

[3]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[4]Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

would answer his questions. The record directly belies this statement and the district court erred in granting the post-conviction petition on this basis.

Next, the State contends that the district court erred in basing its decision upon the failure of the Court Interpreter Services (CSI) office of the district court to prepare a written Spanish plea agreement and present it to Granados prior to the entry of his plea. The State asserts Granados admitted that he read little of the Spanish language and, therefore, the most effective method of translating the plea agreement was to read it in Spanish to Granados. Therefore, the State argues the district court's finding that Granados never saw the written Spanish plea agreement is irrelevant. We agree.

This court has concluded a criminal defendant has a "due process right to an interpreter at all crucial stages of this criminal process . . . if that defendant does not understand the English language."[5] This guarantee insures the criminal defendant will be able to adequately assist in his defense in accordance with due process of law.[6] Granados had an interpreter at each crucial stage of the proceeding. A Spanish version of the written plea agreement is not required under due process and is useless when the defendant indicates he barely reads Spanish.

This court looks to the totality of the circumstances to determine whether a defendant entered a plea with an actual

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

[6]Id. at 972, 878 P.2d at 987.

understanding of the nature of the charges.[7] Thus, "In accepting an Alford plea or a plea of nolo contendere, a district court must determine not only that there is a factual basis for the plea but 'must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.'"[8] The record reflects that, in addition to the information provided in the translated plea agreement, the district court canvassed Granados about the voluntary nature of the plea, the range of punishment, that sentencing was in the discretion of the court, and that it was in his best interests to enter a plea. The State advised the district court on the factual basis for the plea in Granados' presence and Granados indicated he understood what the State said and that the district court would rely on those statements in accepting the plea.

Based on the foregoing, we conclude the totality of circumstances demonstrates Granados knowingly and voluntarily entered the plea agreement. Accordingly, the district court erred in granting Granados' petition for a post-conviction writ of habeas corpus and vacating Granados' sentence and we,

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[7]Gomes, 112 Nev. at 1480-81, 930 P.2d at 706; see also State v. Freese, 116 Nev. 1097, 1104, 13 P.3d 442, 447 (2000) (internal citation omitted) (noting that the "failure to utter talismanic phrases will not invalidate a plea where a totality of the circumstances demonstrates that the plea was freely, knowingly and voluntarily made").

[8]Gomes, 112 Nev. at 1481, 930 P.2d at 706 (quoting Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

ORDER the judgment of the district court REVERSED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Robert E. Glennen III
Clark County Clerk