IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN G. CASTILLO-CARRILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40245

FILED

OCT 10 2003

CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Juan Castillo-Carrillo's post-conviction petition for a writ of habeas corpus.

On November 1, 2001, the district court convicted Castillo-Carrillo, pursuant to a guilty plea, of two felony counts of driving under the influence of intoxicating liquors (DUI), in violation of NRS 484.379 and 484.3792. The district court sentenced Castillo-Carrillo to serve two consecutive terms of 60 months in the Nevada State Prison with the possibility of parole in 24 months. No direct appeal was taken.

On April 22, 2002, Castillo-Carrillo filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Castillo-Carrillo filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Castillo-Carrillo or to conduct an evidentiary hearing. On September 5, 2002, the district court denied Castillo-Carrillo's petition. This appeal followed.

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In his petition, Castillo-Carrillo raised three allegations of ineffective assistance of trial counsel.[1]

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 further demonstrate a reasonable probability that, but for counsel's errors, the results of the proceedings would have been different.[3]

First, Castillo-Carrillo contended that his trial counsel was ineffective for failing to object to the State's use of four prior misdemeanor DUI convictions to enhance his current two DUI charges to felonies on the grounds that he was not represented by counsel during those proceedings.

NRS 484.3792(1)(c) provides that a third DUI offense committed by a defendant within a seven-year period enhances the offense from a misdemeanor to a category B felony. Records of prior misdemeanor DUI convictions based on guilty pleas are deemed constitutionally adequate to support an enhanced felony DUI count where the "spirit of

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[1]To the extent that Castillo-Carrillo raised separate constitutional challenges to his four prior misdemeanor DUI convictions, and the felony enhancement provisions of NRS 484.379 and 484.3702, we conclude that these challenges fall outside of the scope of permissible claims that may be raised in a petition for a writ of habeas corpus. See NRS 34.810(1)(a).

[2]See Hill v. Lockhart, 474 U.S. 52, 57 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

[3]See Hill, 474 U.S. at 59; Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

constitutional principles" has been upheld in taking the pleas, and the records reveal that the defendant was either represented by counsel, or formally waived the right to counsel, during those prior proceedings.[4]

Our review of the record reveals that Castillo-Carrillo pleaded guilty to, and was convicted of, four separate misdemeanor DUI offenses which were committed on: July 15, 1998; November 22, 1998; December 24, 1998; and, October 30, 2000. Documents in the record also reveal that Castillo-Carrillo was represented by a public defender in at least two of those proceedings, and waived the right to counsel in at least one other proceeding. As such, Castillo-Carrillo's claim that his prior misdemeanor DUI convictions should have been challenged by his trial counsel as being invalid because he was not represented by counsel during those proceedings was without merit, as the record belied such a claim.[5] Therefore, we conclude that Castillo-Carrillo's trial counsel was not ineffective for failing to raise this issue.

Second, Castillo-Carrillo contended that his trial counsel was ineffective for failing to challenge the validity of his four prior misdemeanor DUI convictions on the basis that he was not informed at the time he pleaded guilty to those charges that they may be used to enhance any DUI charges that may be brought against him in the future.

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[4]See Koenig v. State, 99 Nev. 780, 788-89, 672 P.2d 37, 42-43 (1983); see also Pettipas v. State, 106 Nev. 377, 379, 794 P.2d 705, 706 (1990).

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

Our review of the record reveals that Castillo-Carrillo signed documents that informed him of the penalties for a third DUI conviction during at least three of his prior misdemeanor DUI proceedings. Thus, Castillo-Carrillo's claim that he was never informed of the consequences of his guilty pleas was belied by the record.[6] Moreover, there is not any plea agreement in the record that expressly limits the future use of Castillo-Carrillo's four prior misdemeanor convictions for enhancement purposes.[7] Therefore, we conclude that Castillo-Carrillo's trial counsel was not ineffective for failing to challenge his prior misdemeanor DUI convictions on this basis as well.

Third, Castillo-Carrillo contended that his trial counsel was ineffective for failing to object to the State's use of his four prior misdemeanor DUI convictions to separately elevate each of his two current DUI charges to felony counts. To extend Castillo-Carrillo's argument to its logical conclusion, however, would mean that a fourth DUI charge brought against a defendant within a seven-year period, pursuant to NRS 484.379 and 484.3792, would have to be charged as a misdemeanor, and not a felony count. Such an interpretation of these statutes is

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[6]See id.

[7]See Speer v. State, 116 Nev. 677, 680, 5 P.3d 1063, 1065 (2000) (holding that a prior misdemeanor DUI conviction obtained within seven years may be used for future enhancement purposes where "there is no plea agreement limiting" its use).

unreasonable and contrary to their plain meaning.[8] We conclude, therefore, that Castillo-Carrillo's trial counsel was not ineffective for failing to raise this argument.

In his petition, Castillo-Carrillo also contended that his guilty plea was not knowingly and voluntarily entered because he could not speak English, did not understand the criminal process, and believed that he was pleading guilty to two misdemeanor, not felony, DUI charges.

A guilty plea is presumptively valid, and the burden is on the petitioner to show that it was not freely, knowingly, and voluntarily made under a totality of circumstances from the record.[9]

The record reveals that Castillo-Carrillo signed a written plea agreement that he understood that, as a consequence of his guilty plea, the district court must sentence him to a minimum term of imprisonment "of not less than one (1) year and a maximum term of not more than six (6) years for each count charged." Castillo-Carrillo had the assistance of a public defender, as well as a Spanish interpreter, during his plea canvass and at his sentencing hearing before the district court. During his plea canvass, Castillo-Carrillo stated that the plea agreement was read to him in Spanish before he signed it. The district court later asked, "Do you understand that as a result of your plea you could be sentenced up to six years in prison?" Castillo-Carrillo replied, "Yes." We conclude, therefore,

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[8]See id. at 679-80, 5 P.3d at 1064-65.

[9]Freese v. State, 116 Nev. 1097, 1104, 13 P.3d 442, 447 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

that a totality of the circumstances shows that his plea was both knowingly and voluntarily entered.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Castill-Carrillo is not entitled to relief and that briefing and oral argument are unwarranted.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]

_____, J.
Rose

_____, J.
Leavitt

_____, J.
Maupin

cc: Hon. John S. McGroarty, District Judge
Juan G. Castillo-Carrillo
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[10]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[11]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.