

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO SMITH PARRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40404

FILED

JAN 31 2003

ORDER OF AFFIRMANCE

JANE T. SLOAN
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant Julio Smith Parra's post-conviction petition for a writ of habeas corpus.

On November 27, 2000, Parra was convicted, pursuant to a jury trial, of two counts of burglary while in possession of a firearm, two counts of robbery with the use of a deadly weapon, and one count of aiming a firearm at a human being. The district court sentenced Parra: for each count of burglary, to serve a prison term of 35 to 156 months; for the first count of robbery, to a serve prison term of 36 to 155 months with an equal and consecutive term for the use of a deadly weapon; for the second count of robbery, to serve a prison term of 62 to 156 months with an equal and consecutive term for the use of a deadly weapon; and for aiming a firearm at a human being, to serve a jail term of 12 months. The district court ordered all sentences except the deadly weapon enhancements to run concurrently. Parra appealed, and this court affirmed his conviction.¹

¹Parra v. State, Docket No. 37020 (Order of Affirmance, November 16, 2001).

On April 27, 2001, Parra filed a proper person post-conviction petition for a writ of habeas corpus. Parra filed another post-conviction habeas petition on May 29, 2001. The State opposed the petitions. On October 4, 2001, the district court denied the petitions.² On May 24, 2002, Parra, with the assistance of appointed counsel, filed a supplemental petition to the writ of habeas corpus. The State opposed the supplemental petition. On September 30, 2002, after hearing arguments from counsel, the district court denied the petition. This appeal followed.

Parra first contends that his trial and appellate counsel were ineffective with regard to a motion to suppress. While acknowledging that both trial and appellate counsel challenged the voluntariness of Parra's confession pursuant to Miranda v. Arizona,³ Parra contends that those challenges were deficient in failing to cite the controlling case of Tucker v. State.⁴ Parra contends that his confession would have been suppressed if his counsel had cited to Tucker because, like the defendant in Tucker, Parra was intoxicated to the extent that he was unable to understand the meaning of his statements. We conclude that the district court did not err in rejecting Parra's contention.

²We note that the habeas petitions filed in April and May and the district court order denying those petitions are not contained in the record. However, because the State does not allege that the supplemental petition was successive, we will presume that the district court denied those petitions without prejudice, until this court resolved Parra's direct appeal.

³384 U.S. 436 (1966).

⁴92 Nev. 486, 553 P.2d 951 (1976) (holding that confession was inadmissible where defendant was so intoxicated that he was unable to understand the meaning of his statements).

Parra's claim with regard to counsels' conduct in litigating the admissibility of the confession is barred by the doctrine of the law of the case because that issue was fully litigated in the district court and on direct appeal.⁵ Although Parra attempted to reformulate his argument in terms of ineffective assistance of counsel, this court has fully considered the issue of whether Parra's confession was admissible. In concluding that Parra's confession was admissible, this court reviewed the motion to suppress, the State's opposition, and the complete transcript of the suppression hearing. In the order of affirmance filed in Parra's direct appeal, this court reasoned that the confession was admissible because "appellant was repeatedly informed of his Miranda rights, that he understood those rights, and that appellant was not forced or coerced into making a statement." Notably, in the order of affirmance, this court cited Tucker in support of its conclusion that "the mere fact that appellant may have been using methamphetamine is not sufficient to render his Miranda rights invalid." Because the doctrine of the law of the case prevents relitigation of this claim, the district court did not err in rejecting Parra's claim without conducting an evidentiary hearing.⁶ Parra may not avoid the doctrine of the law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁷

⁵See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (a petitioner is entitled to an evidentiary hearing only on claims that, if true, would entitle him to relief).

⁷Hall, 91 Nev. at 316, 535 P.2d at 799.

Parra next contends that his trial counsel was ineffective in failing to protect Parra's rights under Article 36 of the Vienna Convention on Consular Relations. In particular, Parra contends that because he was a Cuban national, trial counsel "should have contacted the Cuban Consulate" to request they "send a diplomatic note to the U.S. State Department formally protesting the alleged breach of Article 36" and, thereafter, sought suppression of Parra's confession based on a violation of his Article 36 rights.⁸ We conclude that the district court did not err in rejecting Parra's claim.

Article 36 "provides that a foreign national who is 'arrested or committed to prison' . . . has the right to have his foreign consulate notified and to communicate therewith."⁹ In Garcia v. State, however, this court held that a violation of a defendant's notification rights under [Article 36 of] the Vienna Convention does not amount to structural error and does not warrant suppression of evidence.¹⁰ Accordingly, even assuming trial counsel was deficient with regard to Parra's Article 36 rights, Parra was not prejudiced by the deficient conduct because even if the Cuban Consulate or trial counsel had raised an Article 36 violation, such a violation would not have resulted in the suppression of Parra's confession

⁸We note that trial counsel's motion to suppress raised the claim involving the Vienna Convention, but Parra alleges it was later abandoned when substitute trial counsel was appointed.

⁹Garcia v. State, 117 Nev. 124, 127, 17 P.3d 994, 996 (2001) (quoting Vienna Convention, April 24, 1963, 21 U.S.T. 77, 101).

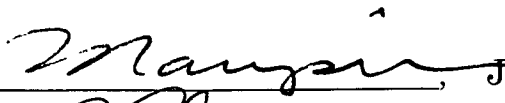
¹⁰Id. at 129, 17 P.3d at 996-97.

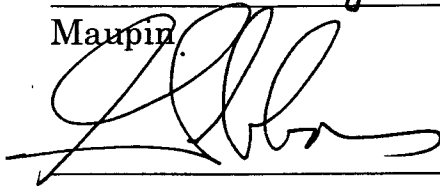
or reversal of his conviction.¹¹ Because Parra's claim of ineffective assistance of counsel involving the Vienna Convention would not have entitled him to relief, the district court did not err in rejecting Parra's claim without conducting an evidentiary hearing.¹²

Having considered Parra's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Hinds & Morey
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹¹Although Garcia was published in February 2001, well after the suppression hearing, which occurred on in April 7, 2000, the holding in Garcia was based, in part, on authority published prior to April 2000 including the State Department's interpretation of the Vienna Convention and U.S. v. Li, 206 F.3d 56 (1st Cir. 2000).

¹²See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.