

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL MONDRIGON SANCHEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40936

FILED

JAN 23 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ribada*  
CHIEF DEPUTY CLERK

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

On January 2, 2002, the district court convicted Sanchez, pursuant to an Alford plea,<sup>1</sup> of attempted lewdness with a child under the age of 14. The district court sentenced Sanchez to serve of a term of 24 to 240 months in the Nevada State Prison. No direct appeal was taken.

On September 26, 2002, Sanchez filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Sanchez filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Sanchez or to conduct an evidentiary hearing. On January 27, 2003, the district court denied Sanchez's petition. This appeal followed.

In his petition, Sanchez raised numerous claims of ineffective assistance of counsel. To establish ineffective assistance of counsel, a claimant must demonstrate "(1) that counsel's performance was deficient,

---

<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

and (2) that the deficient performance prejudiced the defense."<sup>2</sup> Further, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>3</sup> "A reasonable probability is a probability sufficient to undermine confidence in the outcome."<sup>4</sup>

First, Sanchez contended that trial counsel was ineffective for encouraging him to enter into the plea agreement. A counsel's decision to advise his or her client to plead guilty is a tactical decision.<sup>5</sup> "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."<sup>6</sup> Sanchez did not present any extraordinary circumstances.<sup>7</sup> Therefore, he failed to demonstrate that counsel was ineffective.<sup>8</sup>

---

<sup>2</sup>Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

<sup>3</sup>Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

<sup>4</sup>Id. (quoting Strickland, 446 U.S. at 694).

<sup>5</sup>Wilson v. State, 99 Nev. 362, 372, 664 P.2d 328, 334 (1983).

<sup>6</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 1072, n.6, 13 P.3d 420, 432 n.6 (2000).

<sup>7</sup>See generally Strickland, 466 U.S. at 691.

<sup>8</sup>See United States v. Cronin, 466 U.S. 648, 657 n.19 (1984) (holding that even where there is a bona fide defense to the crime charged, "counsel may still advise his client to plead guilty if that advice falls within the range of reasonable competence under the circumstances").

Second, Sanchez contended that trial counsel failed to investigate his innocence and discover the nature and extent of his alleged crimes. Sanchez, however, failed to allege sufficient facts that, if true, would entitle him to relief.<sup>9</sup> In particular, Sanchez failed to allege what information would have been revealed as a result of additional investigation and how that information would have affected his decision to plead guilty. Sanchez therefore failed to demonstrate that counsel was ineffective.

Third, Sanchez contended that trial counsel failed to inform him of all of the available defenses. Our review reveals that this allegation is belied by the record, and therefore Sanchez is not entitled to relief.<sup>10</sup> The written plea agreement states that Sanchez discussed the possible defenses, defense strategies, and favorable circumstances with trial counsel. During the plea canvass, Sanchez stated that he had read and understood the plea agreement, that he fully discussed the agreement with trial counsel, and that he voluntarily entered into the plea. Under these circumstances, Sanchez failed to demonstrate that counsel's performance was deficient and that the deficiency prejudiced his defense.

Fourth, Sanchez contended that trial counsel misrepresented to him that he was certain to receive probation if he pleaded guilty and certain to be convicted and sentenced to life in prison if he did not. This allegation is belied by the record, and therefore Sanchez is not entitled to relief.<sup>11</sup> The written plea agreement specifically addressed limitations on

---

<sup>9</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>10</sup>See id.

<sup>11</sup>See id.

probation and the term of imprisonment that the district court might impose. During the plea canvass, Sanchez stated that he had read and understood the plea agreement and that he fully discussed the agreement with trial counsel. More importantly, by entry of his guilty plea Sanchez expressly agreed to a conditional term of 2-20 years imprisonment in the written plea agreement and during the plea canvass. Under these circumstances, Sanchez cannot demonstrate that counsel's performance was deficient and that the deficiency prejudiced his defense.

Fifth, Sanchez contended trial counsel was ineffective for failing to explain the nature of the negotiated sentence, the effect of the agreement on probation eligibility, and the significance of lifetime supervision. As previously mentioned, the written agreement specifically addressed probation and imprisonment. The agreement also informed Sanchez that he would be sentenced to lifetime supervision.<sup>12</sup> During the plea canvass, Sanchez stated that he had read and understood the plea agreement and that he fully discussed the agreement with trial counsel. Under these circumstances, Sanchez failed to demonstrate that counsel's performance was deficient and that the deficiency prejudiced his defense.

Sixth, Sanchez contended that trial counsel was ineffective for failing to bring to the district court's attention the fact that its plea canvass was inadequate. Sanchez specifically argued that the district court failed to ensure that he voluntarily and knowingly entered his plea. However, Sanchez failed to allege sufficient facts that, if true, would

---

<sup>12</sup>See Palmer v. State, 118 Nev. \_\_\_, \_\_\_, 59 P.3d 1192, 1196-97 (2002) (holding that a defendant must have notice of lifetime supervision because it is a direct consequence of his guilty plea).

entitle him to relief on this claim.<sup>13</sup> In particular, Sanchez failed to allege any facts that would have given trial counsel cause to believe the plea canvass was inadequate.<sup>14</sup> Accordingly, we conclude that Sanchez has not demonstrated that counsel was deficient for failing to inform the district court that its plea canvass was inadequate.

Seventh, Sanchez contended trial counsel was ineffective for failing to object to the factual basis the State presented during the plea canvass. Sanchez specifically argued that the State's factual basis was insufficient for entry of the plea because the State failed to provide evidence of intent. However, Sanchez failed to allege any facts that would have given trial counsel cause to believe the factual basis for the Alford plea was inadequate.<sup>15</sup> Accordingly, we conclude that Sanchez has not demonstrated that counsel was deficient for failing to object to the State's factual basis.

Eighth, Sanchez contended trial counsel was ineffective for failing to object to the State's breach of the plea agreement. Specifically, Sanchez claimed that the State attempted to prove that he was guilty of attempted sexual assault of a child instead of attempted lewdness. However, Sanchez was convicted of attempted lewdness with a child under

---

<sup>13</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.

<sup>14</sup>See NRS 174.035(2); State v. Freese, 116 Nev. 1097, 1104-06, 13 P.3d 442, 447-48 (2000).

<sup>15</sup>See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996) (concluding that an adequate factual basis was demonstrated where the prosecutor informed the court of the evidence the State was prepared to present and the evidence would have been sufficient to sustain a conviction).

the age of 14, the crime to which he pleaded guilty. Therefore, Sanchez failed to demonstrate that he was prejudiced by counsel's inaction.

Ninth, Sanchez contended trial counsel was ineffective for failing to supplement Sanchez's pre-sentence motions or submit his own motion to withdraw the guilty plea. However, Sanchez failed to demonstrate that he was prejudiced by counsel's failure to augment his proper person motions or submit an additional motion to withdraw the guilty plea. Accordingly, we conclude that counsel was not deficient.

Tenth, Sanchez contended trial counsel was ineffective for allowing Sanchez to enter a guilty plea before the district court had ruled on his discovery request for a psychiatric examination. However, Sanchez failed to demonstrate a reasonable probability that, had he waited until the district court ruled on his request, "he would not have pleaded guilty and would have insisted on going to trial."<sup>16</sup> Therefore, Sanchez failed to demonstrate that he was prejudiced by counsel's action.

Eleventh, Sanchez contended trial counsel was ineffective for failing to advise him of meritorious claims that could be raised on direct appeal. However, this court has held "that there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal."<sup>17</sup> We have recognized that

under certain circumstances, counsel will have an obligation to advise the defendant of the right to appeal. One such circumstance is when the defendant inquires about an appeal. Another circumstance is when the situation indicates that

---

<sup>16</sup>Kirksey at 988, 923 P.2d at 1107 (quoting Hill, 474 U.S. at 59).


<sup>17</sup>Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).


the defendant may benefit from receiving the advice, such as the existence of a direct appeal claim that has a reasonable likelihood of success.<sup>18</sup>


Sanchez did not claim that he had inquired about an appeal nor did he demonstrate the existence of a direct appeal claim which would have had a reasonable likelihood of success. As such, Sanchez failed to demonstrate that counsel was ineffective.

Having reviewed the records on appeal and for the reasons set forth above, we conclude that Sanchez is not entitled to relief and that briefing and oral argument are unwarranted.<sup>19</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>20</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

---

<sup>18</sup>Id.

<sup>19</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>20</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Joseph T. Bonaventure, District Judge  
Angel Mondrignon Sanchez  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk