IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS FELIPE VASQUEZ A/K/A LUIS F. VAZQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42440

FILED

JUN 09 2004

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

ORDER OF AFFIRMANCE

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

On September 19, 2002, the district court convicted Vasquez, pursuant to a guilty plea, of grand larceny auto (count I) and burglary (count II). The district court sentenced Vasquez to serve a term of 16 to 60 months in the Nevada State Prison for count I, and a concurrent term of 48 to 120 months for count II. No direct appeal was taken.

On August 25, 2003, Vasquez filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On October 7, 2003, Vasquez filed a supplement to his petition. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Vasquez or to conduct an evidentiary hearing. On November 7, 2003, the district court denied Vasquez's petition. This appeal followed.

In his petition, Vasquez alleged that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient

to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.[1] Further, a petitioner 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."[2] The court need not consider both prongs of the test if the petitioner makes an insufficient showing on either prong.[3]

Vasquez first contended that his trial counsel was ineffective in failing to file an appeal after Vasquez was given a sentence in excess of that provided in the plea agreement.

"[T]here is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" unless the defendant inquires about a direct appeal or there exists a direct appeal claim that has a reasonable likelihood of success.[4] The burden is on the defendant to indicate to his attorney that he wishes to pursue an appeal.[5] Here, Vasquez did not allege that he asked his trial counsel to file an appeal. Further, Vasquez did not identify a direct appeal issue that would have had a reasonable likelihood of success. The guilty plea agreement, which Vasquez acknowledged in the district court that he

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[1]See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

[2]Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

[3]Strickland, 466 U.S. at 697.

[4]Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

[5]See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

signed and read, provided that he would receive a sentence of not less than one year and not more than five years for his grand larceny auto conviction, and a sentence of not less than one year and not more than ten years for his burglary conviction. The guilty plea agreement further provided that Vasquez could be required to pay restitution to the victims. The sentence Vasquez received was within the parameters provided by the guilty plea agreement. Consequently, Vasquez failed to establish that his trial counsel was ineffective on this issue.

Vasquez next contended that his trial counsel was ineffective for failing to strike a reference to Michelle Page's Chevrolet in the guilty plea agreement. Vasquez alleged that he told his trial counsel that he wanted to plead guilty to offenses involving Cory Beck's Ford, rather than Page's Chevrolet. A review of the record on appeal reveals that during the entry of Vasquez's guilty plea, the information was amended with respect to the burglary count to remove a reference to Page's Chevrolet; the burglary count only made reference to Beck's Ford. Therefore, Vasquez's claim is partially belied by the record.[6] The reference to Page's Chevrolet was not removed from the grand larceny auto count, however, because Vasquez did not commit grand larceny auto with respect to Beck's Ford. Therefore, Vasquez failed to demonstrate that his trial counsel acted unreasonably on this issue, and the district court did not err in denying this claim.

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[6]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Vasquez is not entitled to relief and that briefing and oral argument are unwarranted.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Luis Felipe Vasquez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[8]We have reviewed all documents that Vasquez has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Vasquez has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.