

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR NAVARRO-SEDANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46681

FILED

MAY 23 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On August 20, 2003, appellant Victor Navarro-Sedano was convicted, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced Navarro to serve a prison term of 10 to 25 years. Navarro did not file a direct appeal.

On February 18, 2004, Navarro filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Navarro, and counsel filed a supplement to the petition. After conducting an evidentiary hearing, the district court denied the petition. Navarro filed this timely appeal.

Navarro first contends that the district court erred by rejecting his petition because his guilty plea was invalid under the doctrine of supervening impracticability. In particular, Navarro contends that his plea was void because the INS hold placed by the federal

government made it impossible for him to render substantial assistance. In a related argument, Navarro argues that his plea was invalid because the State breached the plea agreement by acting "in concert" with the federal government with respect to the INS hold thereby denying Navarro an opportunity to perform substantial assistance and obtain the benefit of his bargain. We conclude that Navarro's contention lacks merit.

The district court found that the guilty plea was valid, and the doctrine of supervening impracticability did not apply because the INS hold did not prevent Navarro from performing substantial assistance. To the contrary, the district court found that Navarro and his wife, on Navarro's behalf, were both provided the opportunity to perform substantial assistance but failed to do so.

The district court's finding is supported by substantial evidence.¹ In particular, Navarro testified at the post-conviction hearing that police officers from the narcotics unit visited him in jail, and he agreed to provide assistance. Navarro also testified that the officers asked him where the person that sold him drugs lived, and although he knew the address, Navarro did not provide the officers with the information at that time. Defense counsel Lyn Beggs testified at the post-conviction hearing that, after Navarro was incarcerated, an INS hold was placed on him, meaning that Navarro could not be released from jail to assist authorities in controlled buys. Defense counsel also testified that, despite the INS hold, she attempted to facilitate the substantial assistance process by

¹See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

contacting police officers in the narcotics unit on Navarro's behalf. Defense counsel explained that a narcotics officer offered to meet with Navarro a second time to see if he could identify drug traffickers and also offered to allow Navarro's wife to perform substantial assistance on Navarro's behalf. Finally, defense counsel testified that she sought several continuances of the sentencing proceeding in order to provide Navarro with the opportunity to perform substantial assistance, but neither he nor his wife ever did so. In light of the testimony at the evidentiary hearing, we conclude that the district court did not abuse its discretion in finding that the INS hold did not invalidate the guilty plea.

Navarro next contends that his trial counsel was ineffective by failing to advise him that trial was an option. The district court rejected Navarro's contention. We conclude that the district court did not abuse its discretion because there is sufficient evidence that defense counsel provided effective representation in advising Navarro about the right to a trial.² Specifically, defense counsel testified that she thoroughly reviewed the evidence in the case and advised Navarro about going to trial and "the pros and cons that go along with that." Defense counsel believed the plea bargain was in Navarro's best interest, in part, because the State agreed to dismiss another level 1 trafficking case on which Navarro was arrested while out of custody in the instant case. Defense counsel also testified that she did not believe that the district attorney would reduce the level 3 trafficking count because the instant offense involved 160 grams of

²See Strickland v. Washington, 466 U.S. 668 (1984).

methamphetamine and, in her experience, the district attorney would not reduce a level 3 charge if over 100 grams of controlled substance were involved. Finally, defense counsel testified that she always informed her clients that they were under no obligation to accept a plea bargain and that she was "prepared 100 percent to go to jury trial." Accordingly, Navarro failed to show that the district court erred in finding that defense counsel provided effective representation with respect to the plea bargain.

Last, Navarro contends that his conviction is void because the sentencing court failed to place specific findings on the record on the issue of substantial assistance pursuant to Parrish v. State.³ Navarro's claim falls outside of the scope claims permissible in a post-conviction petition for a writ of habeas corpus where the conviction is based upon a guilty plea.⁴ Further, Navarro waived this claim by failing to raise it on direct appeal from the judgment of conviction.⁵ Nonetheless, we note that defense counsel conceded at the sentencing hearing that Navarro failed to provide substantial assistance and, therefore, no factual findings on the issue were necessary.


³116 Nev. 982, 12 P.3d 953 (2000).


⁴See NRS 34.810(1)(a).


⁵See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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

ORDER the judgment of the district court AFFIRMED.⁶

 C.J.
Rose

 J.
Maupin

 J.
Gibbons

cc: Hon. Robert H. Perry, District Judge
Stephen G. Young
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶On April 26, 2006, counsel for appellant filed a motion to withdraw as counsel. We deny the motion.