

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ROBERTO COLATO, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54592

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingold*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Jose Roberto Colato's post-conviction petition for a writ of habeas corpus that was filed pursuant to the remedy provided in Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Colato contends that (1) defense counsel was ineffective for failing to advise him that the deadly weapon enhancement would run consecutively to the attempted murder sentence and (2) the procedures leading to the entry of his guilty plea were defective because the district court failed to inform him that the deadly weapon enhancement doubled the penalty. However, we previously addressed substantially similar issues in our order affirming in part, reversing in part, and remanding Colato's initial petition for a writ of habeas corpus, and we conclude that these issues are barred by the doctrine of the law of the case. Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

Colato also contends that the State breached the guilty plea agreement. The State agreed to concurrent sentences on each count; however, during sentencing, the prosecutor stated, "We concur with the

recommendation on Count II and, as indicated in the plea agreement, have no objection to those two counts running consecutive.” Colato did not object to this statement. We conclude that the State’s breach does not constitute plain error because Colato concedes that he received the benefit of his bargain and was not prejudiced by the prosecutor’s statement. See Puckett v. United States, 129 S. Ct. 1423, 1432-33 (2009); Sullivan v. State, 115 Nev. 383, 387-88 n.3, 990 P.2d 1258, 1260-61 n.3 (1999).

Having considered Colato’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Robert H. Perry, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>1</sup>We note that the judgment of conviction contains a clerical error; it fails to state that the attempted murder was with the use of a deadly weapon. Following this court’s issuance of its remittitur, the district court shall enter a corrected judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).