

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROMULO LOPEZ VELASCO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59403

FILED

MAY 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Romulo Lopez Velasco, Jr.'s post-conviction motion to withdraw his guilty plea. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Velasco contends that the district court erred by denying his post-conviction motion to withdraw his guilty plea without an evidentiary hearing. Velasco claims that counsel failed to advise him about the potential immigration consequences of his guilty plea and therefore his plea was not validly entered. See Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473 (2010). In support of his motion, Velasco submitted a signed affidavit, guilty plea memorandum, and transcript from his oral plea canvass.

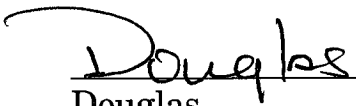
The State contends that Velasco's motion is subject to the equitable doctrine of laches. This doctrine "precludes consideration of the motion on the merits." Hart v. State, 116 Nev. 558, 564-65, 1 P.3d 969, 973 (2000). Although the State argued below that Velasco's motion was subject to laches, the district court instead reached the merits of Velasco's motion. Because laches is a threshold issue, the district court should not have addressed the merits of Velasco's motion without first determining


whether it is precluded by laches. After reviewing the record on appeal, we conclude that the equitable doctrine of laches precluded consideration of the motion because there was a fourteen-year delay from entry of the judgment of conviction, an implied waiver exists from Velasco's knowing acquiescence in existing conditions, and the State may suffer prejudice from the delay. Id. at 563-64, 1 P.3d at 972.

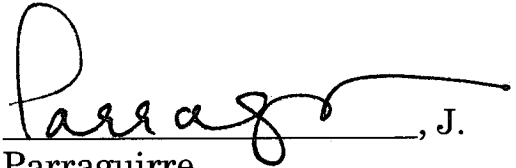
However, even if laches did not preclude consideration of Velasco's motion on the merits and Padilla applies retroactively, the district court did not err because Velasco's "motion consisted primarily of 'bare' or 'naked' claims for relief, unsupported by any specific factual allegations that would, if true, have entitled him to withdrawal of his plea." Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Velasco's claim that his plea was not entered knowingly or voluntarily is repelled by the record. See id. at 503, 686 P.2d at 225 ("A defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record."). Page four of his signed guilty plea memorandum specifically states, "I understand that this plea and resulting conviction may have adverse effects on my residency in this country if I am not a U.S. citizen." Although "[a] defendant's comprehension of the consequences of a plea, the voluntariness of a plea and the general validity of a plea are to be determined by reviewing the entire record and looking to the totality of the facts and circumstances surrounding the plea," State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000), Velasco's plea canvass and signed affidavit do nothing to rebut his signed statement that "I offer my plea freely, voluntarily, knowingly and with full understanding of all matters set forth . . . in this Plea Memorandum."

We are also not convinced that counsel's failure to advise Velasco about the potential adverse consequences of his guilty plea, if true, rendered counsel's performance deficient under Padilla. At the time Velasco entered his guilty plea an alien in his situation could travel abroad for brief periods without jeopardizing his resident alien status. See Rosenberg v. Fleuti, 374 U.S. 449, 462 (1963) (superseded by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546 (enacted September 30, 1996) (effective April 1, 1997)). Furthermore, Velasco's claim of prejudice is belied by the record. See Padilla, 559 U.S. at ___, 130 S. Ct. at 1482 (explaining that in order to establish prejudice there must be "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (quoting Strickland v. Washington, 466 U.S. 668, 694 (1984))); see also Nika v. State, 124 Nev. 1272, 1279, 198 P.3d 839, 844 (2008) ("A court need not consider both prongs of the Strickland test if a defendant makes an insufficient showing on either prong."). Velasco's guilty plea memorandum directly contradicts his claim that but for counsel's unprofessional errors, he would not have entered a guilty plea. Therefore, we conclude that the district court correctly denied the motion without an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Robert M. Draskovich, Chtd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk