

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR M. TORRES-MEJIA, A/K/A  
EFREN MURO MEJIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72584

**FILED**

FEB 13 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Victor M. Torres-Mejia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 28, 2016, and supplemental petition filed on September 1, 2016. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Torres-Mejia contends the district court erred by denying his claims that counsel was ineffective in the plea bargaining process. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697.

First, Torres-Mejia argued counsel failed to advise him as to the expiration of the State's guilty-plea offer. Torres-Mejia failed to demonstrate deficiency or that he was prejudiced. Torres-Mejia was

present with an interpreter at the November 8, 2012, hearing when the prosecutor stated on the record the outstanding guilty-plea offer would expire on November 27, 2012. Torres-Mejia contends this was not a firm expiration date for several reasons.

He first argues the State had previously extended offer deadlines, so there was no reason for him to believe November 27 was a firm expiration date. However, the State's prior actions are irrelevant to counsel's effectiveness where, as here, Torres-Mejia has not alleged counsel told him a different expiration date. He next argues the prosecutor's comment at a December 20, 2012, hearing that the offer was "now" revoked indicated the deadline was not in November. However, the prosecutor's comment simply indicated the offer was not available at the December hearing, not that it expired effective that date. Finally, Torres-Mejia points to a prosecutor's April 22, 2013, statement to the district court that a plea offer had expired on February 7, 2013, as evidence that the plea negotiations were ongoing at the December hearing. However, this statement was made by a prosecutor who was appearing for the first time in Torres-Mejia's case and who was not in charge of negotiating his case. Rather, at the April 19, 2013, hearing, the prosecutor who was in charge of negotiating the case stated he had put a deadline on the plea offer the prior October and was not inclined to extend it any further.

Not only has Torres-Mejia failed to demonstrate the deadline was not in November 2012, but he also acknowledged the November deadline in his supplemental petition. Torres-Mejia thus failed to demonstrate counsel was objectively unreasonable or a reasonable probability of a different outcome had counsel acted differently. We therefore conclude the district court did not err by denying this claim.


Second, Torres-Mejia argued counsel failed to object to the district court conducting the December hearing without an interpreter present. Torres-Mejia claimed he was entitled to an interpreter because the hearing was a critical stage of the proceedings since it was part of the plea bargaining process. The facts underlying Torres-Mejia's claim are belied by the record. As discussed above, the State's guilty-plea offer expired nearly a month before the hearing. Accordingly, the December hearing was not part of the plea bargaining process, but simply an opportunity for the State to put on the record Torres-Mejia's failure to accept the negotiations by the previous deadline. Notably, Torres-Mejia has never claimed he accepted or intended to accept the plea offer prior to its November expiration. We therefore conclude the district court did not err by denying this claim. *Cf. Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding petitioners are not entitled to evidentiary hearings where underlying factual allegations are belied by the record).

Torres-Mejia also contends the district court erred by denying his claim that appellate counsel was ineffective. To demonstrate ineffective assistance of appellate counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

Torres-Mejia argued appellate counsel should have claimed the lack of an interpreter at the December hearing violated his due process rights because it was part of the plea-bargaining process and thus a critical stage of the proceedings. For the reasons discussed above, we conclude counsel was not objectively unreasonable in not raising the claim, and the

claim did not have a reasonable probability of success on appeal. We therefore conclude the district court did not err by denying this claim.

Having concluded Torres-Mejia's claims lack merit, we  
ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Michael Villani, District Judge  
Resch Law, PLLC d/b/a Conviction Solutions  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>The Honorable Abbi Silver did not participate in the decision in this matter.