

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAFAEL VAZQUEZ-GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70807

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Rafael Vazquez-Gonzalez appeals from an order of the district court denying his postconviction petition for a writ of habeas corpus filed on June 2, 2016, and his motion to summarily dismiss the State's opposition to his petition filed on June 7, 2016.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

In his postconviction petition for a writ of habeas corpus, Vazquez-Gonzalez claimed the district court lacked subject matter jurisdiction over his case and his counsel was ineffective for failing to argue the district court lacked subject matter jurisdiction. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant an evidentiary hearing, a petitioner must allege specific facts that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Vazquez-Gonzalez claimed the district court lacked subject matter jurisdiction to convict him because justices of the Nevada Supreme Court improperly participated in their creation and the bill creating the Nevada Revised Statutes was not properly introduced, considered, or passed by the legislature and governor. Vazquez-Gonzalez failed to demonstrate the district court lacked subject matter jurisdiction or his counsel's performance was deficient or resulting prejudice.

Vazquez-Gonzalez's claim did not implicate the subject matter jurisdiction of the district court. Therefore, he failed to demonstrate objectively reasonable counsel would have raised this issue. *See Nev. Const. art. 6, § 6; NRS 171.010; United States v. Cotton*, 535 U.S. 625, 630 (2002) ("[T]he term jurisdiction means . . . the court's statutory or constitutional power to adjudicate the case." (internal quotation marks


omitted)). We note the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. *See* NRS 220.120. We further conclude Vazquez-Gonzalez failed to demonstrate justices of the Nevada Supreme Court improperly participated in the creation of the Nevada Revised Statutes or the bill authorizing the Nevada Revised Statutes was not properly passed. Accordingly, Vazquez-Gonzalez failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel raised this issue. Therefore, the district court did not err in denying these claims without holding an evidentiary hearing.


We also conclude the district court did not err in denying Vazquez-Gonzalez's petition to summarily dismiss the State's opposition without holding an evidentiary hearing. The State had not yet filed, and never filed, an opposition to Vazquez-Gonzalez's petition.


Finally, Vazquez-Gonzalez requested extraordinary relief in his postconviction petition for a writ of habeas corpus and filed a separate petition for extraordinary relief on the same day as his postconviction petition for a writ of habeas corpus. In this petition, Vazquez-Gonzalez challenged his judgment of conviction, and requested the district court to expunge his conviction and order his immediate release from prison. Because Vazquez-Gonzalez improperly challenged the validity of his judgment of conviction through a petition for a writ of extraordinary relief, *see* NRS 34.160; NRS 34.320; NRS 34.724(2) (stating a postconviction

petition for a writ of habeas corpus is the proper vehicle with which to challenge a judgment of conviction), he was not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
Rafael Vazquez-Gonzalez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We also conclude the district court did not abuse its discretion by denying Vazquez-Gonzalez's motion to appoint counsel. See NRS 34.750(1).