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Gonzales v. State, 136 Nev. Adv. Op. 60 (Oct. 1, 2020)

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CRIMINAL LAW: POST-CONVICTION RELIEF, INEFFECTIVE ASSISTANCE OF
COUNSEL

Summary

The Court, here, ruled that a petition for habeas corpus based on ineffective assistance of counsel following a guilty plea must meet specific parameters based on the plain meaning of NRS 34.810(1)(a). The claim of ineffective assistance of counsel must be directly related to the guilty plea itself. It must be plead with specific facts showing that both the advice of counsel was objectively unreasonable and that it affected the outcome of the plea.

Background

Melvin Gonzales pled guilty to three counts of aggravated stalking for sending threatening messages to his ex-wife and her family. Gonzales' conviction was affirmed on direct appeal by the Nevada Supreme Court. Gonzales then filed a postconviction habeas petition and two supplements. His petition alleged several claims of ineffective assistance of counsel, both with regard to his trial counsel and his appellate counsel. The district court denied his petition and dismissed nearly all of his claims as they fell outside of the claims allowed for habeas petitions under NRS 34.810(1)(a). Gonzales appealed this issue to the Nevada Supreme Court.

Discussion

Since habeas relief for state crimes is a product of state law, the Court looked to NRS 34.810(1)(a), which describes the types of claims that can be made in a postconviction habeas petition arising after a guilty plea.² This statute says that courts shall dismiss habeas petitions if “[t]he petitioner's conviction was upon a plea of guilty... and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.”³ Since this is a matter of statutory interpretation, the Court reviewed Gonzales' petition de novo.

Plain language

The Court began its review with the plain language of the statute. Looking at its language, the Court determined that there are two ways to attack the validity of a guilty plea: the first is to challenge the plea on the basis that it was not voluntarily or knowingly entered and the second is to challenge the plea on the basis that it was entered without effective assistance of counsel.

Since Gonzales made no claims about the voluntary or knowing aspects of his plea, the Court examined the statute's language as it pertains to a challenge based on ineffective assistance of counsel. In interpreting this section, the Court held that NRS 34.810(1)(a) only allows a habeas petition when the petitioner's claim of ineffective assistance of counsel is related to the entry of

¹ By Mia Bacher.

² NEV. REV. STAT. § 34.810(1)(a) (2020).

³ *Id.*

the plea. In other words, claims for ineffective assistance of counsel that are not directly related to the validity of a guilty plea shall be dismissed by the court.

Statutory and legislative history

The Court made it clear that the language of the statute was unambiguous in that only ineffective assistance of counsel claims directly related to the validity of the guilty plea could be heard. However, they elected to discuss the statutory and legislative history in order to showcase how these petitions came to be limited.

In the 1960s, defendants could challenge their convictions through NRS Chapter 177, which provided for postconviction relief, or through NRS Chapter 34, which provided for habeas corpus provisions.⁴ Neither of these Chapters contained limitations on the relief available when the conviction was made through a guilty plea. After several decades, the legislature began amending these Chapters in order to limit the ability of defendants to use two alternative remedies.⁵ In 1973, the language of Chapter 177 was amended to limit post-conviction relief for those who pled guilty to only situations in which there was a claim that the plea was not voluntarily entered.⁶ This change was made to reflect the United States Supreme Court's decisions in what is now known as the *Brady* trilogy.⁷ In all three of these cases, defendants alleged a deprivation of their constitutional rights that occurred before their guilty pleas. The Supreme Court held that by pleading guilty, defendants foreclose their right to an inquiry of the constitutional claims and their only claim for relief would be to argue that the plea was not entered voluntarily or knowingly.

In 1985, Chapter 34 was also amended to include limitations on habeas petitions for defendants who pled guilty.⁸ It limited habeas petitions for those who challenged the voluntariness of their plea or who contented their plea was entered without effective assistance of counsel.⁹ This change was made to consolidate the procedures of Chapter 177 and Chapter 34 as well as to adopt the United States Supreme Court's holding in *Tollett*.¹⁰ The *Tollett* case clarified that an ineffective assistance of counsel claim *is* a constitutional claim and it is an exception to the general rule that guilty pleas cut off all constitutional claims arising before the plea; the claim for ineffective assistance of counsel must, however, be in regards to the validity of the guilty plea.

Finally, in 1987, the provisions of Chapter 177 involving post-conviction relief were repealed and consolidated under the provisions of Chapter 34. After this review, the Court held that the long and complex legislative history of NRS 34.810(1)(a) further proves that habeas petitions based on ineffective assistance of counsel must be related to the validity of the guilty plea. Other claims of ineffective assistance of counsel cannot be the basis of a habeas petition.

Application of NRS 34.810(1)(a) to ineffective-assistance claims

To establish ineffective assistance of counsel, the petitioner must show that his counsel's performance was deficient in that it "fell below an objective standard of reasonableness" and that

⁴ See *Pellegrini v. State*, 117 Nev. at 870–73, 34 P.3d at 526–28 (2001).

⁵ *Id.* at 871, 34 P.3d at 527.

⁶ 1973 Nev. Stat., ch. 349, § 8, at 439.

⁷ See *Parker v. North Carolina*, 397 U.S. 790 (1970); *McMann v. Richardson*, 397 U.S. 759 (1970); *Brady v. United States*, 397 U.S. 742 (1970).

⁸ 1985 Nev. Stat., ch. 435, § 10(1), at 1232.

⁹ *Id.*

¹⁰ See *Tollett v. Henderson*, 411 U.S. 258 (1973).

there was petitioner was prejudiced because there was a “reasonable probability of a different outcome absent counsel’s errors.”¹¹

The question of deficiency is answered by looking at counsel’s actions preceding the plea in order to determine if they met the standard of competence for criminal lawyers.¹² This is comprised mainly of the advice counsel gave the defendant leading up to the plea. Claims relating to deprivations of constitutional rights are only relevant here if they are pertinent in evaluating the counsel’s advice.¹³ The question of prejudice revolves around whether or not the ineffective counsel affected the outcome of the plea. To show this, petitioner must show a reasonable probability that, but for counsel’s poor advice, he would not have taken the guilty plea.¹⁴

To fall within NRS 34.810(1)(a), an ineffective assistance of counsel claim must be based on actions of counsel that affect the validity of the guilty plea itself. To prove such, a petitioner must allege claims “supported by specific factual allegations...[that] if true, would entitle him or her to relief.”¹⁵ Thus, a petitioner must claim there are specific facts which show that counsel’s advice or lack thereof regarding their plea was unreasonable and that it affected the outcome of the plea.

Here, Gonzales made several claims of ineffective assistance of counsel. He first claimed that his trial attorney was ineffective for his lack of objection to the State’s breach of the plea agreement at the sentencing hearing. He also claimed that his appellate counsel was ineffective for not raising this issue on appeal. Both of these claims arise from alleged deficiencies that occurred after the guilty plea was entered and thus fall outside the scope of claims allowed under NRS 34.810(1)(a). The dismissal of these claims is affirmed.

Gonzales also raised claims of ineffective assistance of counsel that related to events prior to the entrance of his plea. First, he claimed that his counsel failed to sever charges, but he did not show how this failure was objectively unreasonable. Second, he claimed that counsel should have moved to lower the crimes charged and should not have advised him to plead to the more serious crimes. However, he did not allege that his decision to plead guilty was in any way affected by this deficiency. Last, he claimed that counsel threatened the State would pursue habitual criminal treatment if the plea was not accepted, but he did not claim that this was objectively unreasonable or that it affected his decision to plead guilty. Because these claims were not plead according to standards, their dismissal is also affirmed.

Conclusion

Based on the plain language and legislative history, NRS 34.810(1)(a) limits habeas petition based on ineffective assistance of counsel to only those that directly challenge the validity of the guilty plea. The claims must be pled with specific facts that show counsel’s advice regarding the plea was deficient (or objectively unreasonable) and that it affected the outcome of the plea. None of Gonzales’ claims fell within this rule and were thus properly dismissed.

¹¹ See *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984).

¹² *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

¹³ *Tollett*, 411 U.S. at 267–68.

¹⁴ *Missouri v. Frye*, 566 U.S. 134, 148 (2012).

¹⁵ See *Hargrove v. State*, 100 Nev. 498, 502–03, 686 P.2d 222, 225 (1984).