

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

7-2021

Gonzales v. State, 137 Nev. Adv. Op. 40 (July 29, 2021).

Samuel Holt

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

A SECOND CHANCE: HABEAS CORPUS REMEDIES FOR CRIMINAL DEFENDANTS

Summary

Nevada Revised Statutes (NRS) § 34.810(1)(a) provides that a court shall dismiss a writ of habeas corpus if the petitioner in the post-conviction claim fails to allege either that (1) the plea deal was involuntarily or unknowingly entered or (2) the plea deal was entered without effective assistance of counsel.² Here, the Nevada Supreme Court held that the “spirit, subject matter, and public policy” underlying NRS § 34.810(1)(a) does not bar a petitioner from claiming in a writ of habeas corpus that his or her attorney was ineffective at a sentencing hearing.³ Furthermore, the Court held that the petitioner’s claim is meritorious because his attorney failed to object to the State’s breach of the plea agreement.

Background

In 2013, the State charged Melvin Gonzales with burglary, receiving stolen property, possession of methamphetamine, and four counts of aggravated stalking. Gonzales agreed to plead guilty to three counts of aggravated stalking in exchange for the State dismissing all remaining charges. As part of the plea deal, the State explicitly agreed to recommend at the sentencing hearing concurrent sentences for each count of stalking.

At the sentencing hearing, however, the prosecutor agreed with the sentencing recommendations of the Division of Parole and Probation. The Division of Parole and Probation recommended that two of the three sentences run consecutively rather than concurrently. Gonzales’s attorney did not object to the prosecutor’s sentencing recommendation. The district court sentenced Gonzales to three consecutive sentences.

Gonzales filed a postconviction petition for a writ of habeas corpus, arguing that his attorney rendered ineffective assistance of counsel because his attorney (1) did not object during sentencing about the State breaching the plea agreement, (2) improperly advised him to enter into a plea agreement, and (3) did not move to suppress evidence. The district court denied Gonzales’s ineffective-assistance-of-counsel claims. Regarding Gonzales’s first ineffective assistance argument, the Court concluded that NRS § 34.810(1)(a) bars Gonzales from arguing in a post-conviction petition that his attorney was ineffective at sentencing. Gonzales appealed his postconviction petition to the Nevada Supreme Court, seeking reversal of the district court’s decision.

Discussion

NRS 34.810 does not bar claims that counsel was ineffective at sentencing

NRS § 34.810(1)(a) provides that a court shall dismiss a writ of habeas corpus if the petitioner’s post-conviction claim fails to allege either that (1) the plea deal was involuntarily or

¹ By Samuel Holt.

² NEV. REV. STAT. § 34.810(1)(a) (1985).

³ *Butler v. State*, 120 Nev. 879, 893, 102 P.3d 71, 81 (2004).

unknowingly entered or (2) the plea deal was entered without effective assistance of counsel.⁴ Here, the Nevada Supreme Court determined first that NRS § 34.810(1)(a) does not bar Gonzales from claiming in a writ of habeas corpus that his attorney was ineffective at sentencing.

In interpreting the statute, the Court concluded that the statute was ambiguous and therefore, subject to more than one reasonable interpretation.⁵ The Court held that the “spirit, subject matter, and public policy” underlying the statute favors an interpretation that does not limit ineffective-assistance-of-counsel claims arising after entry of the plea deal.⁶

The Court based its holding on an analysis of the statute’s purpose.⁷ The Court found that the purpose for NRS 34.810(1)(a) was to preclude wasteful litigation based on pre-plea violations rather than post-plea violations.⁸ Because the Nevada common law had already recognized limitations on pre-plea remedies,⁹ NRS 34.810(1)(a) codified those common law limits.¹⁰ Accordingly, NRS § 34.810(1)(a) provided a single post-conviction remedy, and, thereby, supplanted the common law writ and other procedures previously available to defendants.¹¹ The Court reasoned that if the legislature did in fact provide a single post-conviction remedy, then it would defy the purpose of the legislature to provide zero remedies for a criminal defendant claiming ineffective assistance of counsel at sentencing.¹² Therefore, the Court reversed the district court on this issue and held that the statute did not preclude Gonzales from seeking post-conviction relief based on a claim of ineffective assistance of counsel at sentencing.

In concluding that Gonzales’s claim of ineffective assistance of counsel at sentencing can proceed under NRS § 34.810(1)(a), the Court then turned to whether the attorney for Gonzalez was in fact ineffective at sentencing. To prove ineffective assistance of counsel, Gonzales needed to show that (1) his attorney’s performance was deficient and (2) that the deficient performance prejudiced Gonzales’s defense.¹³

Ineffective assistance of counsel at sentencing

The Court concluded that Gonzales’s attorney was deficient at sentencing. The Court came to this conclusion by first finding that the State directly breached the plea agreement by advocating for the Division of Parole and Probation’s sentencing recommendations rather than advocating for concurrent sentences. The Court then determined that Gonzales’s attorney had a duty to inform the district court of the State’s breach, and by not doing so, the attorney did not perform as a lawyer of ordinary skill and training.¹⁴

The Court also concluded that the attorney’s deficient performance prejudiced Gonzales at sentencing. The Court stated that there was a reasonable probability that the district court would

⁴ NEV. REV. STAT. § 34.810(1)(a) (1985).

⁵ *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011) (quoting *Butler*, 120 Nev. at 893, 102 P.3d at 81).

⁶ *Butler*, 120 Nev. at 893, 102 P.3d at 81.

⁷ *White v. Warden*, 96 Nev. 634, 636, 614 P.2d 536, 537 (1980).

⁸ The Court finds a strong indication that the Legislature, in passing Chapter 34, intended to provide a remedy when a sentence was imposed. *See* NEV. REV. STAT. § 34.724(1) (1985).

⁹ *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994).

¹⁰ NEV. REV. STAT. § 435.10(1) (1985).

¹¹ *Pellegrini v. State*, 117 Nev. 860, 878, 34 P.2d 519, 531 (2001).

¹² *White*, 96 Nev. at 636, 614 P.2d at 537.

¹³ *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

¹⁴ *State v. Gonzalez-Faguaga*, 662 N.W.2d 581, 588 (Neb. 2003).

not have imposed consecutive sentences if the State had advocated for concurrent sentences.¹⁵ Because Gonzales successfully met both prongs of an ineffective-assistance-of-counsel claim, the Court held that Gonzales was entitled to a new sentencing hearing in front of a new district court judge.¹⁶ The Court instructed the State to comply with the plea agreement by recommending concurrent sentences for all three convictions. On remand, the district court would still retain sentencing discretion and was not obligated to impose a particular sentence.¹⁷

Remaining Claims

The Court, here, dismissed Gonzales's two remaining post-conviction arguments and affirmed the district court's decision on these claims. First, the Court held that Gonzales's attorney did not render ineffective assistance of counsel by advising Gonzales to enter a plea deal. The Court found that there was a factual basis to support a guilty plea to aggravated stalking and thus, his attorney did not act deficiently in advising Gonzales to plead guilty.

Second, the Court held that Gonzales's attorney did not render ineffective assistance of counsel by failing to move for the suppression of evidence regarding the non-stalking charges. The Court held that this claim was meritless for two reasons. First, the Court held that NRS § 34.810(1)(a) bars Gonzales from seeking relief based on pre-plea errors. Second, the Court held that Gonzales's argument was irrelevant because the non-stalking charges were dismissed per the plea deal and therefore, his attorney's decision did not prejudice Gonzales's defense.

Conclusion

NRS § 34.810(1)(a) does not bar Gonzales from claiming in a writ of habeas corpus that his attorney was ineffective at his sentencing hearing. Furthermore, Gonzales's sentencing claim was meritorious because (1) his attorney failed to object at the sentencing hearing to the State's breach of the plea deal and (2) his attorney's failure to object prejudiced Gonzales's defense. The Court dismissed Gonzales's two other post-conviction claims. On remand, Gonzales will receive a new sentencing hearing before a different district court judge. The Court, therefore, reversed in part, affirmed in part, and remanded with instructions.

¹⁵ See *Strickland*, 466 U.S. at 694.

¹⁶ *Echeverria v. State*, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003).

¹⁷ *Van Buskirk v. State*, 102 Nev. 241, 244, 720 P.2d 1215, 1216 (1986) (quoting *People v. Mancheno*, 654 P.2d 211, 214 (Cal. 1982)).