

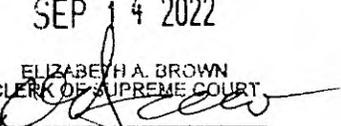
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIGY RICHARD LOPEZ-DELGADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83885-COA

FILED

SEP 14 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Luigy Richard Lopez-Delgado appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Lopez-Delgado argues the district court erred by dismissing his June 10, 2020, postconviction petition and later-filed supplement.

Lopez-Delgado first claimed that his trial-level counsel was ineffective. To demonstrate ineffective assistance of 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 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 687. We give deference to the district 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).

Lopez-Delgado claimed that his trial-level counsel was ineffective for failing to assert that the State breached the plea agreement by presenting its sentencing argument in a manner that urged the district court to sentence Lopez-Delgado to serve a lengthier sentence than what the parties agreed upon.

“When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and the spirit of the plea bargain.” *Sparks v. State*, 121 Nev. 107, 110, 110 P.3d 486, 487 (2005) (internal quotation marks omitted). “A plea agreement is construed according to what the defendant reasonably understood when he or she entered the plea.” *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999). Our review of the record reveals the State complied with both the terms and the spirit of the plea agreement.

In the written plea agreement, the parties agreed to jointly recommend a prison sentence consisting of a term of 48 to 120 months for a count of statutory sexual seduction, a term of 28 to 72 months for a count of first offense possession of visual pornography of a person under the age of 16 years,¹ and a term of 48 to 120 months for a count of lewdness with a child older than 14 years. The parties also agreed to recommend that Lopez-Delgado serve the terms concurrently. In addition, the State reserved “the right to present arguments, facts, and/or witnesses at the sentencing in support of the plea agreement.”

At the sentencing hearing, the State discussed the facts of the offenses and the psychosexual evaluation. The State informed the

¹The parties referred to Lopez-Delgado’s offense as possession of visual pornography of a person under the age of 16. However, the offense is more accurately referred to as visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal. See NRS 200.730.

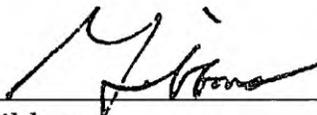
sentencing court that it did so because it wished for the sentencing court to understand why the 4-to-10-year sentence the parties agreed to recommend in the plea agreement was the appropriate sentence to impose. The State repeatedly and explicitly requested the sentencing court to impose a sentence in accordance with the plea agreement. A review of the record reveals that at no time did the State argue or imply that the sentencing court should impose a sentence greater than what the parties had stipulated to. Thus, the State did not breach the plea agreement. Accordingly, Lopez-Delgado did not demonstrate that his trial-level counsel's performance fell below an objective standard of reasonableness by failing to assert that the State breached the plea agreement. Lopez-Delgado also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude that the district court did not err by dismissing this claim.

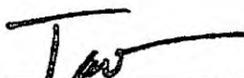
Lopez-Delgado next claimed that his appellate counsel was ineffective. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). 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*, 121 Nev. at 686, 120 P.3d at 1166.

Lopez-Delgado claimed that his appellate counsel was ineffective for failing to argue on direct appeal that the State breached the plea agreement by presenting the sentencing argument in a manner that urged the district court to sentence Lopez-Delgado to serve a lengthier sentence than what the parties agreed upon. As stated previously, the State did not breach the plea agreement but rather urged the district court to impose the sentence the parties agreed upon in the plea agreement. Accordingly, Lopez-Delgado did not demonstrate that his counsel's performance fell below an objective standard of reasonableness due to any failure to argue that the State breached the plea agreement. Lopez-Delgado also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude that the district court did not err by dismissing this claim.

Finally, Lopez-Delgado argues on appeal that the district court's order did not address all of the claims that he raised in his petition. However, in his opposition to the State's motion to dismiss and at the hearing concerning his petition, Lopez-Delgado explicitly abandoned all of his claims except for the claims alleging that the State breached the plea agreement. The district court's order considered and rejected the breach-of-the-plea-agreement claims. Because the district court's order addressed the only remaining claims, Lopez-Delgado is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Scott N. Freeman, District Judge
Luigy Richard Lopez-Delgado
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk