

SUPREME COURT OF NEVADA

Matthew David Fugate v. State

Fugate v. State · No. 82044 · Decided January 14, 2022

SUMMARY

The Nevada Supreme Court affirmed in part, reversed in part, and remanded an order denying Matthew David Fugate’s postconviction habeas petition. The court held that claims alleging ineffective assistance at sentencing and ineffective assistance affecting the guilty plea were not procedurally barred under NRS 34.810(1)(a) and should be considered on the merits. It affirmed the denial of Fugate’s claim concerning continuation of sentencing without appointment of new counsel because that claim was outside the statute’s scope and waived for failure to raise it on direct appeal.

CASE DETAILS

COURT	Supreme Court of Nevada
JURISDICTION	Nevada
DECIDED	January 14, 2022
DOCKET	82044
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the Second Judicial District Court denying a postconviction petition for a writ of habeas corpus as procedurally barred.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion according to the supplied metadata
PARTIES	Matthew David Fugate v. State of Nevada

TOPICS

- state post-conviction relief
- ineffective assistance
- plea bargaining
- sentencing
- appellate procedure

PRACTICE AREAS

- State postconviction relief
- Criminal procedure
- Ineffective assistance of counsel
- Guilty pleas
- Appellate procedure

QUESTIONS PRESENTED

1. Whether claims alleging ineffective assistance of counsel during sentencing are procedurally barred under NRS 34.810(1)(a) when the petitioner was convicted pursuant to a guilty plea.
2. Whether a guilty-plea petitioner may pursue an ineffective-assistance claim based on counsel's failure to investigate a favorable witness when the petitioner alleges that the deficient investigation affected the decision to plead guilty.
3. Whether a postconviction claim challenging the failure to appoint new counsel for a continued sentencing hearing is barred because it does not challenge the validity of the guilty plea or effective assistance of counsel and could have been raised on direct appeal.

HOLDINGS

1. A petitioner who pleaded guilty may assert ineffective-assistance-of-counsel claims concerning sentencing because those claims could not have been raised before the plea; such claims are not barred by NRS 34.810(1)(a) and must be considered on the merits.
2. A claim alleging that a guilty plea was entered without the effective assistance of counsel is permitted under NRS 34.810(1)(a). The district court therefore erred by barring Fugate's claim that counsel's failure to investigate a favorable witness affected his decision to plead guilty.
3. The claim that the district court should have appointed new counsel after continuing the sentencing hearing was outside the scope of claims permitted by NRS 34.810(1)(a) and was waived because it could have been raised on direct appeal.

KEY QUOTATIONS

“There, we clarified that a petitioner who pleaded guilty may allege that he or she received ineffective assistance of counsel at sentencing because that claim could not have been raised before entering the plea and barring such a claim would “violate the spirit of our habeas statute and the public policy of this state.””
(at 1)

“But, NRS 34.810(1)(a) permits claims alleging that a guilty plea was not entered with the effective assistance of counsel.” (at 2)

FACTUAL BACKGROUND

Fugate was convicted after entering a guilty plea. In his first and third postconviction claims, he alleged that counsel rendered ineffective assistance during sentencing. In his fourth claim, he alleged that counsel failed to investigate a favorable witness and that he would have proceeded to trial rather than plead guilty had counsel investigated the witness. In his second claim, he argued that the sentencing hearing should have been continued so that new counsel could be appointed after trial counsel allegedly became adversarial.

PROCEDURAL HISTORY

Fugate was convicted pursuant to a guilty plea and filed a state postconviction habeas petition asserting several claims concerning ineffective assistance of counsel and the handling of sentencing. The district court applied NRS 34.810(1)(a) to bar the claims. The Nevada Supreme Court affirmed the denial of the claim concerning

failure to appoint new counsel, but reversed or vacated the denial of the ineffective-assistance claims and remanded for consideration of their merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reach the merits of Fugate's first, third, and fourth postconviction claims, which allege ineffective assistance of counsel during sentencing or in connection with the guilty plea. The denial of the second claim remains affirmed.

CASES CITED

- Gonzales v. State, 137 Nev., Adv. Op. 40, 492 P.3d 556 (2021)
- Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996)
- Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)
- Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)

OPINION

Fugate (Matthew) v. State

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW DAVID FUGATE, No. 82044

Appellant, vs. FILE

THE STATE OF NEVADA,

Respondent.

ORDER AFFIRMING IN PART,

REVERSING IN PART AND REMANDING

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge. Appellant Matthew David Fugate argues that the district court erred in denying his petition as procedurally barred. We affirm in part, vacate in part, and remand. Fugate was convicted pursuant to a guilty plea. In the first and third claims of his petition for postconviction habeas relief, Fugate alleged that counsel provided ineffective assistance during the sentencing hearing. The district court concluded that the claims were barred under NRS 34.810(1)(a) because Fugate pleaded guilty and the claims were "not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." In rejecting Fugate's petition, the district court did not have the benefit of our recent decision in *Gonzales v. State*, 137 Nev., Adv. Op. 40, 492 P.3d 556

(2021). There, we clarified that a petitioner who pleaded guilty may allege that he or she received ineffective assistance of counsel at sentencing

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because that claim could not have been raised before entering the plea and barring such a claim would "violate the spirit of our habeas statute and the public policy of this state." Id. at 562. Consistent with Gonzales, the district court should reach the merits of Fugate's two claims that counsel provided ineffective assistance at sentencing. In his fourth claim, Fugate argued that counsel should have investigated a favorable witness and that he would have proceeded to trial rather than pleading guilty had counsel done so. Fugate argued that this witness would have provided specific evidence showing that parts of the victims allegations were false. The district court concluded that NRS 34.810(1)(a) barred this claim as well. But, NRS 34.810(1)(a) permits claims alleging that a guilty plea was not entered with the effective assistance of counsel. The district court therefore erred in denying this claim as procedurally barred and should reach the merits of this claim as well. See *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (stating standards for claims of ineffective assistance of trial counsel arising out of guilty pleas). In his second claim, Fugate argued that the district court abused its discretion by continuing the sentencing hearing without appointing new counsel after trial counsel allegedly became Fugate's adversary rather than his advocate. This claim falls outside the scope of claims permitted by NRS 34.810(1)(a) because it does not challenge the effective assistance of counsel or validity of the guilty plea, and the claim is waived because it could have been raised on direct appeal. See *Gonzales*, 492 P.3d at 560; *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by *Thomas v. State*, 115 Nev. 148, 979

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2 01 1947A 441110D P.2d 222 (1999). The district court therefore reached the correct outcome in denying this claim. Accordingly, we ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order. 4:24tt" Parraguirre AA-7LN , J. Hardesty cc: Chief Judge, Second Judicial District Court Department 10, Second Judicial District Court David Kalo Niedert Attorney General/Carson City Washoe County District Attorney Washoe District Court Clerk

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