COURT OF APPEALS
DECISION
DATED AND FILED

May 26, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-3322 **Cir. Ct. No. 97-CF-270**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LUIS G. FLORES,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Washington County: ANNETTE K. ZIEGLER, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Luis G. Flores appeals from the order denying his petition for a writ of habeas corpus. He argues that: (1) he was entitled to a mental competency hearing because he does not speak English, (2) the police violated his rights under the Vienna Convention, (3) he was not informed of the potential deportation consequence of entering a plea, (4) the State did not provide

him with a Spanish translation of the circuit court proceedings, and (5) his probation was not properly revoked. We reject these arguments and affirm the order of the circuit court.

¶2 In March 1998, Flores, who is a native of Mexico, pled guilty to two counts of second-degree sexual assault. When Flores entered his plea, the court did not inform him of the potential deportation consequences of entering a guilty plea. The court sentenced him to seven years in prison on one count, and nine months in jail on the second count. The court stayed the sentence and imposed probation. Flores never appealed from this conviction. In February 1999, his probation was revoked. Flores filed an untimely petition for a writ of certiorari, which was dismissed.

¶3 In 2001, he filed a petition for a writ of habeas corpus alleging that the trial court should have held a hearing on his competency because he does not speak English, that he was never informed of the deportation consequences of his guilty plea, that he did not know that his relationship with a fifteen-year old girl was illegal in the United States, and that his probation was wrongly revoked. The circuit court denied the petition and Flores appealed.

¶4 Since Flores filed this appeal, a number of things have happened. First, we remanded the matter to the circuit court in September 2002 for a determination of whether Flores's plea was likely to result in his deportation. By an order dated December 18, 2002, the circuit court found that Flores had not established that he was likely to be deported. This court subsequently was informed that Flores was being threatened with deportation. The court once again remanded the matter to the circuit court. The circuit court then determined that Flores had, in fact, been deported. This court then asked the parties to address

what affect Flores's deportation had on the status of this appeal. The State submitted a memorandum of law in which it asserted that the deportation did not render the appeal moot. By an order dated June 3, 2003, we agreed with the State's conclusion. We also placed the appeal on hold pending the supreme court's decision in ***State v. Lagundoye***, No. 02-2137 through 02-2139. That case has now been decided. ***Lagundoye***, 2004 WI 4, 268 Wis. 2d 77, 674 N.W.2d 526. Consequently, we now address Flores's appeal from the order denying his petition for a writ of habeas corpus.

¶5 The State first argues that we should consider this to be an appeal from a motion for postconviction relief under WIS. STAT. § 974.06 (2001-02),[1] rather than from a petition for a writ of habeas corpus. As the State concedes, however, the underlying merits remain the same in either case. Hence, we address the merits.

¶6 The first issue is whether the circuit court correctly determined that Flores was not entitled to a pretrial mental competency proceeding. Flores alleges that he was entitled to such a proceeding because he did not speak English. The inability to speak English, however, does not raise a per se doubt about mental competency. *See* ***State v. Haskins***, 139 Wis. 2d 257, 263 n.2, 407 N.W.2d 309 (Ct. App. 1987). Flores has not provided any evidence to suggest that he was not mentally competent to participate in the proceedings or to assist in his defense. *See* WIS. STAT. § 971.13(1). Consequently, we agree with the circuit court that he was not entitled to a competency hearing.

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶7 The next issue raised by Flores is that his rights under the Vienna Convention were violated when he was not informed of his right to speak to the Mexican consulate. We addressed this same issue in ***State v. Navarro***, 2003 WI App 50, ¶1, 260 Wis. 2d 861, 659 N.W.2d 487, *review denied*, 2003 WI 32, 260 Wis. 2d 753, 661 N.W.2d 101 (Wis. Apr. 22, 2003) (No. 02-0850-CR), and determined that the Vienna Convention does not create a private right that a foreign national can enforce in state criminal proceeding. For the same reasons, we conclude that Flores did not have an enforceable right to speak with the Mexican consulate.

¶8 The next issue raised is whether Flores's rights were violated when the circuit court did not inform him of the deportation consequences of his plea. In ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1, the supreme court determined that a circuit must inform a defendant about the potential deportation consequences of entering a plea. It is undisputed in this case that when Flores entered his plea, the circuit court did not inform him of the deportation consequences. It is also undisputed that Flores was subsequently deported. In ***Lagundoye***, however, the supreme court determined that the ***Douangmala*** rule did not apply to cases that had been completed before ***Douangmala*** was decided. ***Lagundoye***, 268 Wis. 2d 77, ¶2. Since Flores did not appeal from the original judgment of conviction, his case was completed in 1998. Therefore, the ***Douangmala*** rule does not apply.

¶9 We then address the issue under the rule of ***State v. Chavez***, 175 Wis. 2d 366, 498 N.W.2d 887 (Ct. App. 1993). Under this rule, a defendant who is otherwise aware of the deportation consequences of his plea is not entitled to withdraw the plea because the court failed to inform him of these consequences. ***Id.*** at 371. In this case, the plea questionnaire contains a statement that: "If I am

not a citizen of the United States, my plea could result in deportation…." Flores initialed this statement. The record also establishes that the plea questionnaire was translated into Spanish for Flores and he stated that he understood the questionnaire. Consequently, we conclude that Flores is not entitled to withdraw his plea.

¶10 The next issue Flores raises is whether the State was required to provide him with a Spanish as well as an English version of the events in the trial court. In support of this argument, he cites to a federal case from New York, ***United States v. Mosquera***, 816 F. Supp. 168 (E.D.N.Y. 1993). This case is not binding on the Wisconsin courts, and there is no requirement in Wisconsin that a translation be provided to the defendant. Further, Flores has not alleged that he was prejudiced in any way by not having a Spanish translation. The record shows that Flores was provided with an interpreter. He has not claimed that the interpreter misled him, or that the information that was provided to him was inadequate, incomplete, or incorrect. Flores asserts, instead, that he cannot tell if it was incorrect without a translation. Flores, however, knows what the interpreter told him. At the very least, he could have told this court what the interpreter said and we could have determined whether he received any misleading or incorrect information.[2] Consequently, we reject Flores's argument on this issue.

¶11 Flores next challenges the decision made at his probation revocation hearing. Habeas corpus, however, is not available as a means of challenging revocation of probation. ***State ex rel. Reddin v. Galster***, 215 Wis. 2d 179, 183,

[2] It is also worth noting that the administrative law judge at the revocation hearing noted that Flores did, in fact, speak English.

572 N.W.2d 505 (Ct. App. 1997). Review of probation revocation is by certiorari to the court of conviction. ***Id.*** Consequently, Flores is not entitled to challenge his probation revocation in this proceeding. For the reasons stated, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.