

STATE V. RIGEL

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
TRAVIS RIGEL,
Defendant-Appellant.

No. 33,586

COURT OF APPEALS OF NEW MEXICO

December 16, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Ross C.
Sanchez, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Karl
Erich Martell, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, M.
MONICA ZAMORA, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Defendant appeals the denial of his motion to withdraw a guilty plea, based largely on his assertion that he did not have sufficient time to consult with counsel at the time of his plea hearing. This Court issued a calendar notice proposing to affirm on the

basis that a hearing was conducted on Defendant's motion at which evidence was introduced establishing that Defendant had been properly advised by counsel prior to the plea hearing. Defendant has filed a memorandum in opposition. Having duly considered that memorandum, we remain unpersuaded and now affirm Defendant's convictions.

{2} Defendant's memorandum in opposition continues to assert that counsel took no time during the plea hearing to consult with him and did not require that the factual basis for one of the charges or the elements of that charge be read into the record at that hearing. The memorandum in opposition acknowledges counsel's testimony regarding consultation prior to the plea hearing and does not offer any reason to believe that such consultation was insufficient to allow Defendant to understand the contents of the plea agreement, including the nature of the charges to which he pled and to enter a knowing and voluntary plea to those charges.

{3} Defendant also suggests that his counsel below should have pursued other avenues of defense, including a motion to suppress statements made to law enforcement. Defendant's memorandum in opposition now suggests that counsel provided ineffective assistance in connection with the plea entered below and requests a remand in order to address that possibility. As we noted in our calendar notice, however, Defendant did not testify in support of his motion to withdraw his plea or at any other time when he could have offered evidence of his counsel's deficient performance. Where, as here, the record is not sufficient for this Court to address a claim of ineffective assistance of counsel, the preferred procedure is to leave the matter for resolution in habeas corpus proceedings. See *State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776 ("A record on appeal that provides a basis for remanding to the trial court for an evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such claims are heard on petition for writ of habeas corpus[.]"); *State v. Martinez*, 1996-NMCA-109, ¶ 25, 122 N.M. 476, 927 P.2d 31 ("This Court has expressed its preference for habeas corpus proceedings over remand when the record on appeal does not establish a prima facie case of ineffective assistance of counsel.").

{4} Thus, for the reasons stated in this Court's calendar notice, we affirm Defendant's convictions without prejudice to Defendant's opportunity to pursue a claim of ineffective assistance of counsel in post-conviction proceedings.

{5} **IT IS SO ORDERED.**

JONATHAN B. SUTIN, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

M. MONICA ZAMORA, Judge