

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20040352-CA	
v.)		
)	F I L E D	
Ignacio Rameriz Lizarraga,)	(February 2, 2006)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2006 UT App 30</td></tr></table>	2006 UT App 30
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First District, Brigham City Department, 031100212
The Honorable Ben H. Hadfield

Attorneys: Roy D. Cole, Ogden, for Appellant
Mark L. Shurtleff and Brett J. Delporto, Salt Lake
City, for Appellee

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Ignacio Rameriz Lizarraga appeals his convictions of rape of a child and supplying alcohol to a minor. Specifically, Lizarraga alleges that his trial counsel was ineffective and that the district court committed plain error by refusing to grant a continuance of the trial. We affirm.

In order to prevail on an ineffective assistance of counsel claim a defendant must first demonstrate "that his counsel rendered a deficient performance in some demonstrable manner, which performance fell below an objective standard of reasonable judgment, and second, that counsel's performance prejudiced the defendant." Parsons v. Barnes, 871 P.2d 516, 521 (Utah 1994) (citations and quotations omitted). "Failure to satisfy either prong will result in our concluding that counsel's behavior was not ineffective." State v. Diaz, 2002 UT App 288, ¶38, 55 P.3d 1131. Without reviewing the first prong of the ineffective analysis, we conclude that Lizarraga's claim fails because he does not demonstrate that he was prejudiced by any of the actions of his trial counsel. In his brief, Lizarraga discusses numerous alleged deficiencies with his trial counsel. Lizarraga states that the only prejudice he suffered was that if his counsel had been effective "this matter would never have gone to trial and a

negotiation would have been reached." There is no evidence in the record, however, that would allow us to evaluate this claim. "Where the record appears inadequate in any fashion, ambiguities or deficiencies resulting therefrom simply will be construed in favor of a finding that counsel performed effectively." State v. Litherland, 2000 UT 76, ¶17, 12 P.3d 92. Thus, because Lizarraga has failed to provide us with a record that would support his claim that he was prejudiced by his counsel's actions, his claim of ineffectiveness of counsel fails.

Lizarraga also alleges that the district court committed plain error by denying his motion to continue the trial. "The grant or denial of a continuance is within the discretion of the trial court. . . . This court will not reverse the trial court's decision absent a clear abuse of discretion." State v. Oliver, 820 P.2d 474, 476 (Utah Ct. App. 1991) (citations omitted). In order to demonstrate that the district court abused its discretion, Lizarraga must show, among other things, that he was prejudiced by the denial of the motion. See id. Lizarraga fails to demonstrate that he was prejudiced by the denial of the motion for a continuance. Specifically, Lizarraga fails to demonstrate how his counsel was in any way unprepared for trial and how that lack of preparation prejudiced his defense. This is especially true when Lizarraga admits on appeal that he had sexual intercourse with the victim, a child under the age of fourteen.¹ See Utah Code Ann. § 76-5-402.1 (2003) (making sexual intercourse with a child a strict liability crime). Lizarraga further admitted at trial to providing alcohol to the victim and other underage guests in his home. See id. § 32A-12-203 (2005) (making it a crime to furnish alcohol to a minor).

Lizarraga's only claimed prejudice is that if the court granted the continuance he might have been able to enter into a plea agreement with the State. However, as with his first claim, there are no facts in the record to support the argument. Without an adequate record we must presume the correctness of the underlying proceedings. See State v. Mead, 2001 UT 58, ¶48, 27 P.3d 1115 (stating "as there is no record to indicate otherwise, we presume the correctness of the proceedings below"). Accordingly, because Lizarraga cannot demonstrate that he was

¹While the record indicates that Lizarraga did dispute that he had sex with the victim, Lizarraga states on appeal: "[I]t was undisputed by the Defense that the Defendant/Appellant did in fact have sexual intercourse with the alleged victim."

prejudiced by the denial of his motion to continue, the district court did not abuse its discretion in denying the motion.

Affirmed.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

William A. Thorne Jr., Judge