IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCO ANTONIO GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44500

FILED

AUG 24 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery (count I), robbery of a victim 60 years of age or older (count II), burglary (count III), attempted robbery with the use of a deadly weapon (count V), and battery with the use of a deadly weapon resulting in substantial bodily harm to a victim 60 years of age or older (count VI). Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Marco Antonio Garcia to serve a prison term of 12 to 36 months for count I, two consecutive prison terms of 24 to 84 months for count II, to run concurrently to count I, a concurrent prison term of 12 to 48 months for count III, two consecutive prison terms of 12 to 48 months for count V, to run consecutively to count I, and two consecutive prison terms of 24 to 84 months for count VI, to run consecutively to count V.

Garcia first contends that the district court erred in refusing his request for alternate counsel made on the date set for trial. Specifically, Garcia contends that he was entitled to counsel of his choosing because there was no basis for denying the request since the brief continuance necessary for alternate counsel to prepare for trial would

have resulted in no prejudice to the State. We conclude that Garcia's contention lacks merit.

There is no Sixth Amendment guarantee to a "meaningful relationship" between a criminal defendant and his counsel.[1] The right to counsel of one's choice is not absolute, and a defendant is not entitled to reject his court-appointed counsel and request substitute counsel at public expense without first showing adequate cause.[2] "Good cause for substitution of counsel cannot be determined 'solely according to the subjective standard of what the defendant perceives.'"[3] In reviewing a ruling on a motion for substitute counsel, this court considers the nature of the conflict alleged, the adequacy of the district court's inquiry, and the timeliness of the motion.[4] "The decision whether friction between counsel and client justifies appointment of new counsel is entrusted to the sound discretion of the trial court," whose decision will not be disturbed absent a clear showing of abuse of discretion.[5]

In this case, we conclude the district court did not abuse its discretion in denying the oral motion for new counsel because there was no sufficient cause to warrant substitute counsel. Notably, Garcia's request was untimely, and he never alleged a breakdown in the attorney-client

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[1]Morris v. Slappy, 461 U.S. 1, 14 (1983); U.S. Const. amend. VI.

[2]Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978).

[3]Thomas v. Wainwright, 767 F.2d 738, 742 (11th Cir. 1985) (quoting McKee v. Harris, 649 F.2d 927, 932 (2d Cir. 1981)).

[4]Young v. State, 120 Nev. ___, ___, 102 P.3d 572, 576 (2004).

[5]Thomas, 94 Nev. at 607-08, 584 P.2d at 676 (citation omitted).

relationship, but merely appeared on the day set for trial with a different attorney and requested a two-month continuance so that his new counsel could prepare for trial.[6] Further, the district court explained its justification for its refusal to appoint substitute counsel:

> Mr. McArthur has been representing Mr. Garcia up until this point. It's on for calendar call.
>
> When this case came before me on a trial date, Mr. Garcia was sent to overflow to district court X and Mr. Garcia failed to show up for court, a mistrial was declared after, I guess, a jury was seated because he didn't show.
>
> Now we're on calendar call and he's brought in Mr. Flangas. The State is ready, the victim is not well and the Court sees this as a manipulation to try and prolong this case so that, perhaps, the victims will not be available. Therefore, the Court is not going to allow Mr. Flangas to substitute in at this time.

We conclude that the district court's inquiry into the nature of the conflict was adequate under the circumstances, and the district court acted within its discretion in ruling that there was inadequate cause for substitution of counsel. Accordingly, the district court did not err in denying Garcia's request for alternate counsel.

Citing to Alabama v. Smith,[7] Garcia next contends that the district court abused its discretion by refusing his request that the trial

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[6]Cf. Young, 120 Nev. at ___, 102 P.3d at 576 (concluding that there was a significant breakdown in the attorney-client relationship where attorney failed to investigate the case, prepare a defense, and violated court order requiring that he communicate with client).

[7]490 U.S. 794, 801 (1989) (noting that, during trial, "the judge may gather a fuller appreciation of the nature and extent of the crimes

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judge, Senior Judge Christensen, preside over the sentencing proceeding. In particular, Garcia alleges that Senior Judge Christensen should have also imposed the sentence because he had the "opportunity to observe the Defendant's conduct at trial to gather any information or insight into the Defendant's character." We conclude that Garcia's contention lacks merit.

Generally, a criminal defendant is entitled to be sentenced by the district judge who presides over the trial.[8] However, that general principle is subject to numerous exceptions, including where "[t]he judge . . . from other cause is unavailable to act."[9]

In this case, the district court ruled that Judge Christensen was unavailable to act because he was a Senior Judge who had to be paid for each court appearance and was "not around here all the time to handle sentencings." We conclude that the district court did not err in rejecting Garcia's request because, under the circumstances, Judge Christensen was "unavailable to act" pursuant to DCR 18(2)(a). Nonetheless, even assuming the district court did err, we conclude that Garcia has failed to show that he was prejudiced by the reassignment of his case to Judge Glass prior to sentencing.[10]

. . . *continued*
charged" and gain "insights into [the defendant's] moral character and suitability for rehabilitation").

[8]See DCR 18; Jeaness v. District Court, 97 Nev. 218, 626 P.2d 272 (1981) (discussing DCR 18).

[9]DCR 18(2)(a).

[10]See State v. Carson, 597 P.2d 862 (Utah 1979) (holding that defendant not prejudiced by the appointment of a replacement judge for

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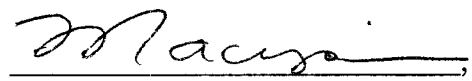
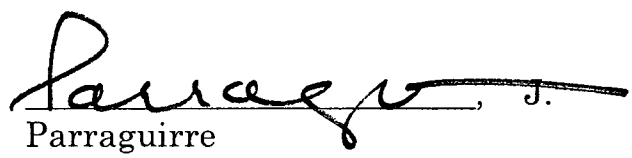
Having considered Garcia's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin

_____, J.
Douglas



_____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Flangas Law Office
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

. . . *continued*
sentencing where the record revealed the judge was familiar with the defendant's record and the facts of the case).