

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD KEITH ANDERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45014

**FILED**

DEC 23 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of six counts of burglary, six counts of forgery, four counts of theft, and six counts of obtaining and using the personal identification information of another. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Arnold Keith Anderson to serve a prison term of 16-72 months for each of the burglary counts (counts I, V, IX, XIII, XVII, and XX), 12-34 months for each of the forgery counts (counts II, VI, X, XIV, XVIII, and XXI), 12-36 months for each of the theft counts (counts III, VII, XI, and XV), and 32-144 months for each of the identity theft counts (counts IV, VIII, XII, XVI, XIX, and XXII); counts I-IV were ordered to run consecutively, and counts V-XXII were ordered to run concurrently to each other and counts I-IV. Anderson was also ordered to pay \$2,000.00 in restitution.

First, Anderson contends that the district court erred in denying his proper person motion to dismiss his court-appointed counsel and appoint alternate counsel. On August 13, 2004, approximately six days before the scheduled start of trial, Anderson filed a motion in the district court. In his motion, Anderson argued that counsel failed to (1) communicate with him, (2) investigate specific issues requested by

Anderson, (3) discuss “the nature of the case,” (4) “address the mistaken remarks by the information that led to a denial of bail reduction,” and (5) file a pretrial habeas petition and/or a motion for a Franks hearing.<sup>1</sup> The district court orally denied the motion during a hearing four days later. On appeal, Anderson claims that (1) the conflict between himself and counsel resulted in a communication breakdown, (2) his proper person motion was timely, and (3) the district court failed to conduct an adequate inquiry into the matter. We disagree.

There is no constitutional guarantee to a meaningful relationship between a criminal defendant and his counsel.<sup>2</sup> The right to choose one’s own counsel is not absolute, and a defendant is not entitled to reject his court-appointed counsel and request alternate counsel at public expense without demonstrating adequate cause.<sup>3</sup> “Good cause for substitution of counsel cannot be determined ‘solely according to the subjective standard of what the defendant perceives.’”<sup>4</sup> A defendant’s lack of confidence in his counsel is not sufficient.<sup>5</sup> The district court retains the

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<sup>1</sup>A Franks hearing is a special suppression hearing conducted to examine an alleged falsehood in an affidavit supporting a search warrant. See Franks v. Delaware, 438 U.S. 154 (1978); Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990), abrogated on other grounds by Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001).

<sup>2</sup>Morris v. Slappy, 461 U.S. 1, 14 (1983); see also U.S. Const. amend. VI; Nev. Const. art. 1, § 8.

<sup>3</sup>Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978).

<sup>4</sup>Thomas v. Wainwright, 767 F.2d 738, 742 (11th Cir. 1985) (quoting McKee v. Harris, 649 F.2d 927, 932 (2d Cir. 1981)).

<sup>5</sup>Id.; see also Brinkley v. State, 101 Nev. 676, 679, 708 P.2d 1026, 1028 (1985) (no abuse of discretion in denying motion for continuance

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discretion to determine “whether friction between counsel and client justifies appointment of new counsel,” and that decision will not be reversed absent an abuse of discretion.<sup>6</sup>

In reviewing a ruling on a motion for substitute counsel, this court considers the extent of the alleged conflict, the timeliness of the defendant’s motion, and the adequacy of the district court’s inquiry.<sup>7</sup> In this case, “[w]eighing all of the factors,”<sup>8</sup> we conclude that the district court did not abuse its discretion in denying Anderson’s motion to dismiss appointed counsel. Anderson cannot demonstrate that there was sufficient cause to warrant the dismissal of his court-appointed counsel. Therefore, Anderson’s contention is without merit.

Second, Anderson contends that his conviction should be reversed because the district court failed to establish on the record that he waived his right to testify. We disagree. Initially, we note that Anderson concedes that the district court informed him about his right to testify and that he discussed the matter with counsel. In fact, trial counsel informed the district court that they extensively discussed the matter, and that counsel was vehemently opposed to Anderson testifying. Finally, this court has stated that an express waiver of the right to testify is not

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*... continued*

based, in part, on “unnoteworthy” claim that appellants were displeased with court-appointed counsel).

<sup>6</sup>Thomas, 94 Nev. at 607-08, 584 P.2d at 676 (citation omitted).

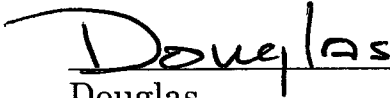
<sup>7</sup>See Young v. State, 120 Nev. \_\_\_, \_\_\_, 102 P.3d 572, 576 (2004); see also Garcia v. State, 121 Nev. \_\_\_, 113 P.3d 836 (2005).

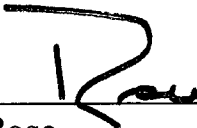
<sup>8</sup>Id. at \_\_\_, 102 P.3d at 578.

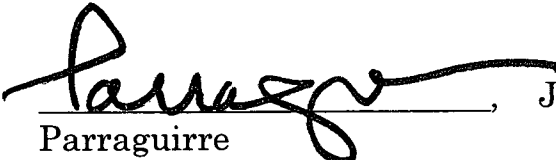
required for a valid conviction.<sup>9</sup> Therefore, we conclude that the district court did not err in this regard.

Having considered Anderson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michael A. Cherry, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>9</sup>Phillips v. State, 105 Nev. 631, 633, 782 P.2d 381, 382 (1989).