

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARMIS ARRENDONDO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45210

FILED

JUN 29 2006

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

ORDER AFFIRMING IN PART AND REMANDING

This is an appeal from a judgment of conviction, upon jury verdict, of one count each of possession of a stolen vehicle and possession of stolen property. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

The district court adjudicated appellant Armis Arrendondo as a habitual criminal and sentenced him on count one, possession of a stolen vehicle, to a maximum term of life with a minimum parole eligibility of ten years, and on count two, possession of stolen property, to a maximum term of life with a minimum parole eligibility of ten years. The sentences are to run concurrently.

Arrendondo raises three issues on appeal: (1) whether the district court erred by concluding that Arrendondo's waiver of his right to counsel was knowing and intelligent, (2) whether the district erred by not giving Arrendondo adequate time to produce witnesses in his defense, and (3) whether the district court erred by granting Arrendondo only two days' credit for time served when he was incarcerated for a longer period following his arrest and before sentencing.

We conclude that (1) Arrendondo's waiver of his right to counsel was valid, and (2) the district court did not err by refusing to grant Arrendondo additional time to produce witnesses. However, we conclude

that (3) the district court erred in granting Arrendondo only two days' credit for time served. The parties are familiar with the facts, and we do not recount them in this order except as is necessary for our disposition.

DISCUSSION

Waiver of right to counsel

Arrendondo contends that his waiver of his right to counsel was invalid because the district court did not properly apprise him of his possible maximum sentence if convicted. The district court informed him that he would be sentenced to a maximum of twenty years in prison if convicted. However, after the jury convicted Arrendondo, the State sought his adjudication as a habitual criminal, which resulted in two concurrent life sentences with parole eligibility in ten years. Arrendondo argues that under Scott v. State,¹ the district court must accurately inform a defendant of the possible sentence he would face if convicted in order for a waiver of the right to counsel to be knowing and intelligent.

District courts are entitled to deference in their decisions to permit a defendant to waive the right to counsel.² "The judge need only be convinced that the defendant made his decision with a clear comprehension of the attendant risks."³

Arrendondo's reliance on Scott is misplaced. Scott reaffirmed an earlier requirement articulated by this court that defendants seeking self-representation must be informed of the possible maximum sentence

¹110 Nev. 622, 877 P.2d 503 (1994).

²See Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

³Id.

they would receive if convicted in order for a waiver of the right to counsel to be valid.⁴ This court, however, has since concluded that there are no specific matters that should be part of a district court's canvass of the defendant to determine whether a waiver of the right to counsel is valid.⁵ "The test of a valid waiver of counsel is not whether specific warnings or advisements were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case."⁶

Here, the district court engaged in an extensive canvass of Arrendondo before finally concluding that Arrendondo's waiver of his right to counsel was knowing and intelligent. Specifically, the district court (1) stated several times that self-representation was a bad idea; (2) informed Arrendondo of the disadvantages attendant to his lack of legal knowledge, the greater knowledge of the prosecutor, and the fact that Arrendondo would not be able to claim ineffective assistance of counsel if convicted; (3) warned Arrendondo that he would be required to comply with the rules of procedure and evidence as if he were an attorney; (4) inquired into Arrendondo's mental health; (5) advised Arrendondo of the elements of the crimes with which he was charged; and (6) informed Arrendondo of a possible twenty-year maximum sentence if convicted.

⁴See Scott, 110 Nev. at 626, 877 P.2d at 506 (citing Anderson v. State, 98 Nev. 539, 540-41, 654 P.2d 1026, 1027 (1982) (quoting Cohen v. State, 97 Nev. 166, 168, 625 P.2d 1170, 1171 (1981))).

⁵See Graves, 112 Nev. at 125, 912 P.2d at 238-39. Such a conclusion is also supported by the permissive language in SCR 253(3)(g).

⁶Arjakis v. State, 108 Nev. 976, 980, 843 P.2d 800, 802-03 (1992).

At the time of the canvass, the district court was not aware that the State would later seek sentencing of Arrendondo as a habitual criminal. Although the district court indicated that Arrendondo would face a maximum of twenty years if convicted, rather than life, the otherwise extensive canvass of Arrendondo demonstrates that he understood the dangers and disadvantages of self-representation. Therefore, Arrendondo's waiver of his right to counsel was knowing and intelligent and, thus, valid.

Time to produce witnesses

Next, Arrendondo argues that the district court erred by not granting him adequate time to produce witnesses in his defense. We conclude that this argument lacks merit. A district court has discretion to determine whether to grant additional time in order for a defendant to secure additional witnesses.⁷ Further, a district court has no duty to assist a proper-person defendant in subpoenaing witnesses.⁸ Here, the district court gave Arrendondo ample time to subpoena and present witnesses in his defense. That Arrendondo was unsuccessful in his subpoenas does not require the district court to grant additional time. Arrendondo was advised that as a proper-person defendant, he would be required to adhere to the same procedural rules as if he were an attorney. Therefore, the district court did not err by not granting Arrendondo additional time to present witnesses.

⁷Cf. Mulder v. State, 116 Nev. 1, 9-10, 992, P.2d 845, 850-51 (2000).

⁸See Harris v. State, 113 Nev. 799, 803, 942 P.2d 151, 154-55 (1997) (concluding that district court has no duty to inform of the right to subpoena witnesses).

Credit for time served

Finally, Arrendondo argues that the district court erred by only granting him two days' credit for time served when he served a total of 577 days from the time he was arrested until he was sentenced. The State contends that Arrendondo must first raise this issue in the district court.

Upon sentencing, a defendant is entitled to a correct grant of credit for time served prior to sentencing.⁹ Although NRS 34.724(2)(c) states that a petition for a writ of habeas corpus is the "only remedy available to an incarcerated person to challenge the computation of time that he has already served pursuant to a judgment of conviction," this court has previously concluded that a direct appeal from the judgment of conviction is appropriate to raise the credit-for-time-served issue.¹⁰ Therefore, Arrendondo has appropriately raised the issue in this appeal.

The record indicates that Arrendondo was arrested on September 29, 2003, and that he was sentenced on April 28, 2005. Therefore, Arrendondo was incarcerated for 577 days prior to sentencing. The record, however, is unclear on whether other circumstances under NRS 176.055(2) would limit the credit Arrendondo should receive. The record also does not indicate how the district court determined that Arrendondo should only receive two days' credit for time served. Accordingly, we conclude that the district court erred in determining


⁹See Kuykendall v. State, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (concluding that the language in NRS 176.055(1), which instructs district courts on granting credit for time served, is mandatory).


¹⁰Johnson v. State, 120 Nev. 296, 298, 89 P.3d 669, 670 (2004).

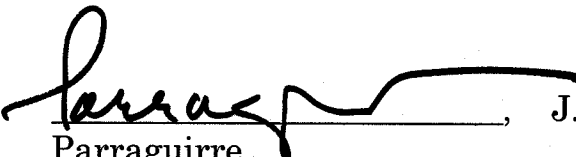
Arrendondo's credit for time served, and we remand for an appropriate determination.

CONCLUSION

For the foregoing reasons, we AFFIRM Arrendondo's conviction and REMAND this case to the district court for a hearing to determine Arrendondo's credit for time served.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Longabaugh Law Offices
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk