IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTOINE SALATHIE FREEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45576

FILED

FEB 17 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery with the use of a firearm. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Antoine Salathie Freeman to serve two consecutive prison terms of 48-180 months and ordered him to pay $2,595.72 in restitution jointly and severally with his codefendants.

At the beginning of Freeman's sentencing hearing, the following exchange occurred:

> DEFENSE COUNSEL: Your Honor, I would represent to the Court that Mr. Freeman would like to get a different attorney and perhaps withdraw his plea. I don't know to what extent you want to hear from him on that. Otherwise, we're ready to go.
>
> THE COURT: Okay. I don't want to hear from you. You want to do something in writing, go ahead and do so. I'm going through with sentence [sic] today.
>
> Seems to me like the last time I saw you you took a hike. Now you've got to face the music. Nope, I'm not going to relieve Mr. Young in any way, shape or form. He's done the best job he possibly can for you. And now it's time to pay the piper.

Based on the above, Freeman contends that the district court (1) violated his Sixth Amendment right to counsel of his own choosing,[1] and (2) abused its discretion by denying his motion to withdraw his guilty plea.[2] Specifically, Freeman argues that the district court "did not even bother to inquire into the difficulty between [retained] counsel and client" and that "[c]ourt investigation was warranted" into the issue of Freeman's desire to withdraw his plea. We disagree.

First, even assuming, without deciding, that the district court was somehow in error by not inquiring into Freeman's desire for a new attorney, Freeman, nevertheless, fails to demonstrate that he was prejudiced in any way. Initially, we note that the district court invited Freeman to provide something in writing, yet Freeman declined. On appeal, Freeman claims for the first time that he had a conflict with counsel, yet he fails to state what the alleged conflict involved. As pleaded, Freeman's allegation is a bare and naked claim for relief lacking in any factual specificity.[3] Further, at no point during the sentencing hearing did Freeman inform the district court that he fired his retained counsel, and he never objected to the proceeding going forward. Finally, to the extent that defense counsel's statement might be construed as a motion for substitution of counsel, it was untimely and "suggestive of a dilatory motive."[4]

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[1]U.S. Const. amend. VI.

[2]See NRS 176.165.

[3]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

[4]Garcia v. State, 121 Nev. ___, ___, 113 P.3d 836, 843 (2005).

Second, Freeman never, in fact, filed a motion to withdraw his guilty plea. Once again, we point out that the district court invited Freeman to do so, yet no motion was filed and ultimately considered by the district court. Further, on appeal, Freeman has again not provided this court with any basis for the granting of a motion to withdraw his guilty plea, and therefore, he cannot demonstrate that he is entitled to any relief.[5]

Finally, Freeman contends that the district court abused its discretion at sentencing by imposing an excessive sentence based on suspect evidence. Specifically, Freeman argues that (1) despite the State's assertion to the contrary, he was cooperative with the arresting officers; (2) the "sanction" for failing to appear at his sentencing hearing and absconding from the State was excessive; and (3) his "actions were actually better than the other defendants." We disagree.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[6] This court has consistently afforded the district court wide discretion in its sentencing decision.[7] The district court's discretion, however, is not limitless.[8] Nevertheless, we will refrain from interfering

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[5]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[6]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

[7]Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[8]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[9] Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[10]

In the instant case, Freeman cannot demonstrate that the district court relied on impalpable or highly suspect evidence, and he does not allege that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[11] We also note that Freeman committed the instant crime while on probation, violated the terms of his probation by associating with and committing the instant crime with his former codefendant, failed to appear for his presentence investigation interview with the Division of Parole and Probation, and failed to appear at his sentencing hearing and fled from the jurisdiction for approximately seven months prior to being arrested by the FBI in California. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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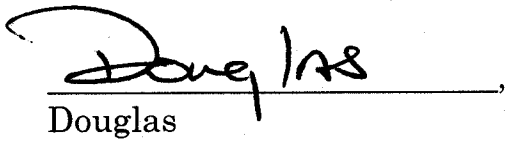
[9]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (emphasis added).

[10]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

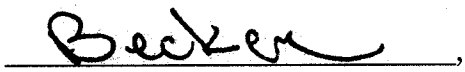
[11]See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years); NRS 195.020; NRS 193.165.

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

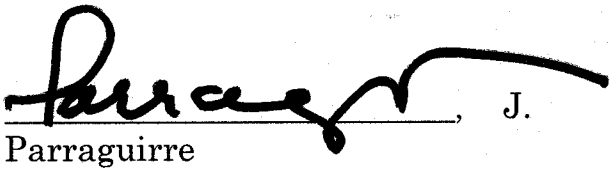
ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas



_____, J.
Becker



_____, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Karla K. Butko
Clifton J. Young
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk