

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRANCE DALE SMITH A/K/A  
TERRANCE DALE SMITH, SR. A/K/A  
TERRENCE DALE SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46739

**FILED**

**JUL 10 2006**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of conspiracy to commit furnishing transportation to a prostitute and trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Terrance Dale Smith to serve a jail term of 12 months and a concurrent prison term of 12-36 months.

Smith contends that the district court abused its discretion by finding that he had not rendered substantial assistance pursuant to NRS 453.3405(2) and therefore was not entitled to receive a sentence reduction. The extent of Smith's argument is that his case should be remanded for a new sentencing hearing because the district court did not make explicit findings regarding whether he provided substantial assistance to law enforcement personnel. We disagree.

NRS 453.3405(2) provides that the district court may reduce or suspend the sentence of any person convicted of trafficking in a controlled substance “if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any . . . person involved in trafficking in a controlled substance.” In other words, the decision to grant “a sentence reduction under NRS 453.3405(2) is a discretionary function of the district court.”<sup>1</sup> In Parrish v. State, this court stated that the sentencing court is required “to expressly state its finding concerning whether or not substantial assistance has been provided.”<sup>2</sup> Nevertheless, in the absence of an express finding by the district court, “this court may imply factual findings if the record clearly supports the lower court’s ruling.”<sup>3</sup>

In this case, we conclude that the district court did not abuse its discretion. Smith’s rendering of assistance to law enforcement personnel was the subject of two sentencing hearings. Defense counsel informed the district court that the plea negotiations – which resulted in

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<sup>1</sup>Matos v. State, 110 Nev. 834, 838, 878 P.2d 288, 290 (1994); see also Parrish v. State, 116 Nev. 982, 988-89, 12 P.3d 953, 957 (2000).

<sup>2</sup>116 Nev. at 992, 12 P.3d at 959.

<sup>3</sup>Id. (citing Matos, 110 Nev. at 836, 878 P.2d at 289).

the dismissal of three additional felony counts,<sup>4</sup> the State's promise not to pursue habitual criminal adjudication, and the State's stipulation to a 12-36 month prison term – reflected the benefit Smith received for providing information which saved the life of a police officer assigned to the detention center. The district court told Smith, “[Y]ou need to know . . . I appreciate the fact that you did what you did with the officer in jail. You got the benefit of a really good negotiation, but you also have quite the criminal history which also gets weighed into what I do with you.” The district court then continued the sentencing hearing in order to allow Smith more time to investigate facts to present regarding his motion for a sentence reduction.

At the continued hearing, the district court heard testimony indicating that Smith provided substantial assistance to authorities in California while in custody there. The district court also heard testimony about minimal assistance Smith provided LVMPD on another matter. Prior to imposing a term of incarceration, the district court stated that it was required to make findings, and then read aloud from NRS 453.3405(2). The district court also noted Smith's extensive criminal history and his efforts to satisfy NRS 453.3405(2), stating, “You've tried really, really, really hard to get out of it doing any time, but you've got the

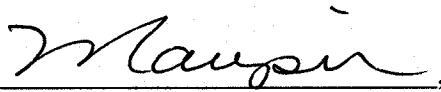
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<sup>4</sup>The State agreed to dismiss one count each of pandering: furnishing transportation, pandering of a child, and living from the earnings of a prostitute.


benefit of your bargain, because you were facing much more serious charges than what you ultimately plead to." Therefore, based on all of the above, we conclude that Smith's contention that the district court abused its discretion is without merit.

Accordingly, we


ORDER the judgment of conviction AFFIRMED.<sup>5</sup>

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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<sup>5</sup>Because Smith is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Smith unfiled all proper person documents he has submitted to this court in this matter.

cc: Honorable Jackie Glass, District Judge  
Clark County Public Defender Philip J. Kohn  
Terrance Dale Smith  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk