

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO DOLORES ALVAREZ A/K/A
PEDRO DOLORES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46999

FILED

OCT 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of two counts of lewdness with a child under 14 years of age. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On appeal, appellant Pedro Dolores Alvarez, a non-native English speaker who represented himself at trial, challenges his conviction on multiple grounds. For the following reasons, we conclude that all of Alvarez's arguments fail and therefore affirm the district court's judgment of conviction. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

Right to counsel-waiver

The district court granted Alvarez's request to waive his right to counsel and represent himself at trial. On appeal, Alvarez contends that the district court erred in granting this request because Alvarez does not speak English fluently and he required an interpreter at trial. We disagree.

A defendant has a constitutional right to proceed without counsel if he voluntarily and intelligently wishes to do so.¹ In granting a

¹Faretta v. California, 422 U.S. 806, 819, 835 (1974).

defendant's request to do so, the district court must conduct a Faretta canvass and apprise the defendant of the disadvantages and risks of self-representation so that the defendant's decision is made with a "clear comprehension of the attendant risks."² "We give deference to the district court's decision to allow a defendant to waive his right to counsel."³

Here, the district court inquired into Alvarez's education and language capabilities, and properly warned Alvarez about the possible negative consequences of self-representation. Based on its canvass, the district court reluctantly granted Alvarez's self-representation request. Even though the district court did not specifically warn Alvarez about the problems that could arise from his apparent language barrier and reliance on an interpreter in front of a jury, we conclude that such a warning was not required.⁴ Thus, the district court did not err in granting Alvarez's request to waive his right to counsel.

Prosecutorial misconduct

Alvarez claims that certain alleged instances of prosecutorial misconduct at trial mandate reversal of his conviction. In particular, Alvarez argues that comments made by the prosecution during its opening statement and closing arguments were designed to inflame jurors'

²Hooks v. State, 124 Nev. ___, ___, 176 P.3d 1081, 1084 (2008) (internal quotation marks omitted).

³Id. at ___, 176 P.3d at 1085.

⁴See U.S. v. Betancourt-Arretuche, 933 F.2d 89, 95 (1st Cir. 1991) (stating that the inability to speak English is not "an insurmountable barrier to pro se representation"); State v. Klessig, 564 N.W.2d 716, 724 (Wis. 1997) (stating that English fluency is one factor to be considered in determining whether a waiver should be accepted).

passions.⁵ However, Alvarez failed to object to the prosecutor's comments and we conclude that they do not constitute plain error.⁶

We observe that some of the prosecutor's statements were problematic—especially the comment about the victim's motives for recanting her story and the comment that the victim “deserved to be believed.” Nonetheless, due to the overwhelming evidence of Alvarez's guilt, the prosecutor's remarks were not prejudicial.⁷ Accordingly, the prosecutor's statements do not rise to the level of plain error and Alvarez is not entitled to relief on this claim.

Conclusion

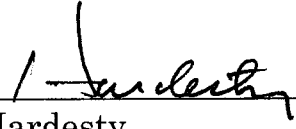
For the reasons set forth above, we conclude that Alvarez's

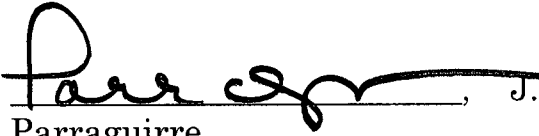
⁶See Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (holding that when appellant fails to object below, this court reviews alleged prosecutorial misconduct only if it constitutes plain error); Rose v. State, 123 Nev. ___, ___, 163 P.3d 408, 418 (2007) (prosecutorial misconduct constitutes plain error when it either “(1) had a prejudicial impact on the verdict when viewed in context of the trial as a whole, or (2) seriously affects the integrity or public reputation of the judicial proceedings” (internal quotation marks omitted)).

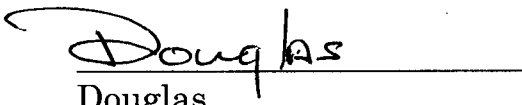
⁷See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000).

arguments on appeal lack merit.⁸ Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Dan M. Winder
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸Alvarez also challenges his conviction based on a violation of his speedy trial rights, the justice court's finding of probable cause, the ineffectiveness of counsel, and the district court's refusal to allow him to establish witness bias. Having carefully reviewed these separate challenges, we conclude that the ineffective-assistance claim is not properly raised on direct appeal and that the other claims do not warrant reversal.