

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN TOLE MOXLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47446

FILED

FEB 01 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of battery by a prisoner. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court adjudicated appellant John Tole Moxley a habitual criminal and sentenced him to serve a prison term of 60 to 240 months.

Moxley contends that the district court abused its discretion by denying his motions for self-representation. "A criminal defendant has the right to self-representation under the Sixth Amendment of the United States Constitution and [article 1, section 8 of] the Nevada Constitution."¹ His "ability to represent himself has no bearing upon his competence to choose self-representation."² If he knowingly and voluntarily "waives

¹Vanisi v. State, 117 Nev. 330, 337, 22 P.3d 1164, 1169 (2001); see Gallego v. State, 117 Nev. 348, 356, 23 P.3d 227, 233 (2001).

²Vanisi, 117 Nev. at 341, 22 P.3d at 1172 (quoting Godinez v. Moran, 509 U.S. 389, 400 (1993)).

counsel and chooses self-representation with an understanding of its dangers, including the difficulties presented by a complex case," the court must honor his request.³ To do otherwise is a reversible error, unless the defendant's request is "untimely, equivocal, or made solely for the purposes of delay" or he abuses his right by disrupting the judicial process.⁴ "[T]he district court may deny a request for self-representation in circumstances where the defendant's prior conduct indicates that he or she is making the request as a delaying tactic."⁵

Here, the district court found that Moxley's requests for self-representation were part of a pattern of dilatory behavior based on his prior conduct in other proceedings over which it had presided. Our review of the record on appeal reveals that the district court's findings are supported by substantial evidence. Accordingly, "we decline to substitute our judgment for the district court's direct observations and findings on

³Id. at 341-42, 22 P.3d at 1172.

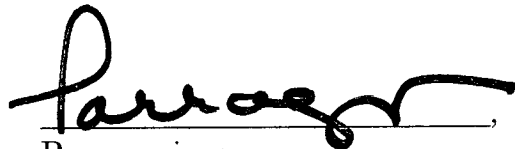
⁴Id. at 338, 22 P.3d at 1170. We note that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom." McKaskle v. Wiggins, 465 U.S. 168, 184 (1984). Here, the district court had ample grounds to find, based on Moxley's prior behavior, that he would be unable "to abide by rules of procedure and courtroom protocol." Id. at 173.

⁵Vanisi, 117 Nev. at 339, 22 P.3d at 1170 (emphasis added).


this matter,"⁶ and we conclude that the district court acted within its discretion in denying Moxley's motions for self-representation.

Having considered Moxley's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶Id. at 339, 22 P.3d at 1171 (citing Tanksley v. State, 113 Nev. 997, 1001-02, 946 P.2d 148, 150-51 (1997)).