

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENRIQUE GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47793

FILED

DEC 21 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of coercion and assault with a deadly weapon. Second Judicial District Court, Washoe County; Norman C. Robison, Senior Judge. The district court sentenced appellant Enrique Garcia to serve two consecutive prison terms of 28 to 72 months.

Garcia contends that he was denied his statutory right to allocution at sentencing pursuant to NRS 176.015(2)(b). Garcia claims that the district court initially offered him an opportunity to make a statement, "but when he stated that he did want to say something, the Court ignored him and went right on ahead with sentencing." We conclude that Garcia's contention lacks merit.

NRS 176.015(2)(b) provides that "[b]efore imposing sentence, the court shall . . . [a]ddress the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment."

At the sentencing hearing, the district court asked Garcia, "Do you want to tell me anything before I impose sentence? I have read your statement about the drugs and so on. You were deported once and you came back." Garcia responded, "Yes, sir," but did not present any additional information in mitigation. The district court then recounted the original charges and asked if there was "any legal cause why judgment should not be pronounced." Defense counsel responded, "I know of none, your honor." To the extent that the sentencing court denied Garcia his statutory right of allocution, Garcia failed to object below. Failure to raise an objection in the district court generally precludes appellate consideration of an issue absent plain error affecting substantial rights.¹ Generally, a defendant must show that he was prejudiced by a particular error in order to prove that it affected substantial rights.²

In this case, Garcia has failed to show that he was prejudiced by the alleged violation of his right to allocution. Before imposing sentence, the district court commented that it had considered Garcia's written statement, and Garcia fails to specify what additional information he would have provided that would have affected the sentence. At the sentencing hearing, the prosecutor noted that Garcia was a probationer when he committed the instant offenses and that the attack on the victim

¹See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

²Id.

was extremely violent. According to the prosecutor, Garcia battered the victim, told her she was going to die by drowning, and attempted to drown her in a toilet and in the bathtub. In imposing the maximum sentence, the district court commented on Garcia's criminal record, noting that after he was deported he returned to the United States and committed three additional felonies. Accordingly, any alleged error with respect to Garcia's right to allocution did not affect his substantial rights.

Citing to this court's recent decision in Ruvalcaba v. State,³ Garcia also alleges that the district court imposed a harsh sentence based on Garcia's status as a foreign citizen. In support of his allegation, Garcia notes that, at the sentencing hearing, the district court commented:

Now, I want to go back to your record. You were deported after committing robbery and you came back here, and you have committed at least three felonies we know of since you have been back here. I am at a little bit of a loss to understand how you got probation on the first charge here, other than possibly you [provided] substantial assistance to the district attorney or something. Because with your history it, probation was a gift. But you wanted to come back here, you committed these crimes, so you are going to be spending some time with us.

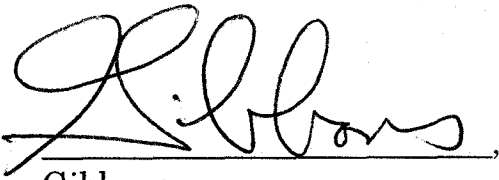
(Emphasis added.) We conclude that Garcia's contention lacks merit.

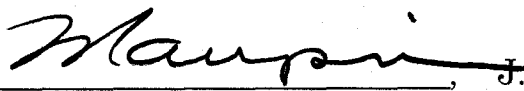
³122 Nev. ___, 143 P.3d 468 (2006).

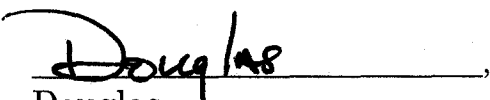
The district court's comments focused on Garcia's prior criminal history which included three prior felonies, not his status as a foreign citizen. Accordingly, the district court did not abuse its discretion at sentencing.

Having considered Garcia's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


Gibbons, J.


Maupin, J.


Douglas, J.

cc: Chief Judge, Second Judicial District
Hon. Norman C. Robison, Senior Judge
Hon. Janet Berry, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk