

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFREDO AGUILAR SANABRIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48371

FILED

FEB 23 2007

ORDER OF AFFIRMANCE

JANEITZ M. BLOOM
CLERK OF SUPREME COURT
BY *J. Castillo*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Alfredo Aguilar Sanabria to serve a prison term of 24-60 months and ordered him to pay a fine of \$2,000.00.

First, Sanabria contends that he was denied his statutory right to allocution at sentencing.¹ Sanabria claims that the district court never offered him an opportunity to make a statement and therefore his case should be remanded to a different district court judge for a new sentencing hearing. We disagree. Prior to the imposition of the sentence, the district court judge asked, "Mr. Sanabria, do you have anything to say

¹NRS 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."

before sentencing?” To which, Sanabria replied, “No.” Therefore, we conclude that Sanabria’s contention is belied by the record.²

Second, Sanabria contends that the district court violated his right to the assistance of counsel and due process at sentencing by not allowing counsel to present evidence of his willingness to provide substantial assistance to law enforcement personnel – the evidence in question being Sanabria’s own testimony.³ We disagree.

“A defendant must show actual prejudice to warrant a new sentencing hearing based on an alleged due process violation.”⁴ Moreover, “[t]he decision to admit particular evidence during the penalty phase is within the sound discretion of the district court and will not be disturbed absent an abuse of that discretion.”⁵ In the instant case, Sanabria cannot demonstrate that he was prejudiced by a due process violation or that he is entitled to a new sentencing hearing. Therefore, we conclude that the district court did not abuse its discretion.

²See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

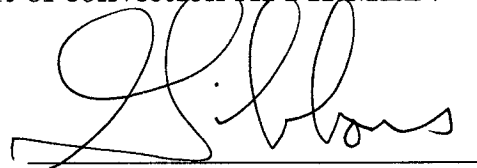
³See NRS 453.3405(2) (the district court may reduce or suspend the sentence of any person convicted of trafficking in a controlled substance “if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any . . . person involved in trafficking in a controlled substance”).

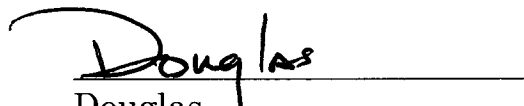
⁴Herman v. State, 122 Nev. ___, ___, 128 P.3d 469, 474 (2006).

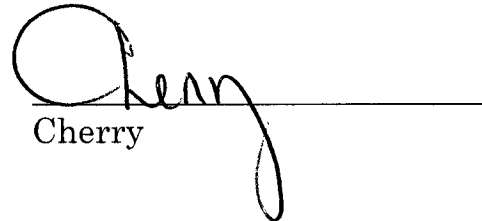
⁵McKenna v. State, 114 Nev. 1044, 1051, 968 P.2d 739, 744 (1998).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk