


IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER RAYMOND FREITAS A/K/A
WALTER R. FREITAS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48554

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a direct appeal from a judgment of conviction, pursuant to a jury verdict, of burglary while in possession of a firearm. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Walter Raymond Freitas to serve a term of 6 to 15 years in prison.

First, Freitas argues that there was insufficient evidence to support the conviction. The relevant inquiry for this court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹ The jury was instructed, without objection, that it could find Freitas guilty of burglary if it found he entered "any room, apartment, tenement, or other building, with the intent to commit a larceny and/or an assault and/or a battery and/or a felony therein." Our review of the record on appeal indicates that Freitas testified that he entered the victim's hotel room while carrying a firearm

¹Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (internal quotation and citation omitted).

with the intent to conduct a drug transaction therein with the victim. Along with other corroborating evidence adduced, this was sufficient to support the jury's verdict under the instructions the jury was given.

Second, Freitas argues that "the jury instruction [was] not tailored to the particular facts" of this case, and had the jury been properly instructed, he would not have been found guilty. Our review of the record on appeal reveals that defense counsel made no objections on the record to the jury instructions. "Generally, failure to raise an issue below bars consideration on appeal."² Freitas fails to argue that any of the instructions as given constituted plain error.³ We therefore decline to address the merits of this claim.

Third, citing Booth v. Maryland⁴ and Payne v. Tennessee,⁵ Freitas argues that the district court erred at sentencing by hearing victim impact testimony by the victim's family members about "the crime, the defendant, and the appropriate sentence." Freitas fails to cite any specific testimony, provides no argument for how the sentencing proceeding did not comport with NRS 176.015's provisions regarding victim impact testimony, and does not argue that NRS 176.015 is unconstitutional. We note that counsel did not object to the district court's playing a compact disc about the victim's life or to testimony by the victim's mother.⁶ Thus,

²State v. Taylor, 114 Nev. 1071, 1077, 968 P.2d 315, 320 (1998).

³See NRS 178.602.

⁴482 U.S. 496 (1987).

⁵501 U.S. 808 (1991).

⁶See Taylor, 114 Nev. at 1077, 968 P.2d at 320.

he did not preserve this issue for appellate review. We further note that, after remarking on Freitas' criminal history and illegal activities and the fact that those activities brought Freitas to the victim's room, resulting in the victim's death, the district court followed the sentencing recommendation in the pre-sentence investigation report.⁷

Having reviewed Freitas' arguments and concluded he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

cc: Eighth Judicial District Court Dept. 6, District Judge
Kristina M. Wildeveld
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See NRS 178.602.