IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY LOUIS DAWSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34358

FILED

APR 30 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of coercion and battery with substantial bodily harm. The district court sentenced appellant Anthony Louis Dawson to serve two consecutive terms of 19 to 48 months in the Nevada State Prison.

Appellant first argues that he was incompetent when he (1) waived his right to counsel; (2) waived his right to a preliminary hearing; and (3) entered his guilty plea.[1] Appellant concludes that the waivers and the guilty plea are therefore invalid. We disagree.

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[1]To the extent that appellant challenges the validity of his guilty plea for reasons other than his alleged incompetence, this court does not allow "a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction." Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Such challenges must be raised "in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding." Id.

First, when appellant moved to waive his right to counsel, the justice court had no reason to entertain a reasonable doubt as to appellant's competence.[2] The only mental health evaluation then available concluded that appellant understood the charges against him and the consequences of those charges, and that he was capable of cooperating with his attorneys.[3] Further, appellant responded appropriately to questions asked by the justice court during appellant's Faretta[4] canvass.

Second, when appellant waived his right to a preliminary hearing in favor of a plea agreement negotiated during the hearing, he

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[2]Cf. Williams v. State, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969) (holding that, for purposes of determining when a trial court must conduct a competency hearing pursuant to NRS 178.405, a reasonable doubt as to a defendant's sanity "means doubt in the mind of the trial court, rather than counsel or others").

[3]Melchor-Gloria v. State, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) ("The test to be applied in determining competency 'must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'") (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)); see also Godinez v. Moran, 509 U.S. 389, 400-01 (1993) (stating that the competency standards for standing trial, pleading guilty or waiving the right to counsel are identical).

[4]Faretta v. California, 422 U.S. 806 (1975).

had recently been found competent by two out of three members of a sanity commission impaneled by the district court pursuant to NRS 178.455. Moreover, appellant's standby counsel was actively involved at the hearing. Standby counsel assisted appellant with his cross-examination of the only State witness, relayed the State's plea offer to appellant, and advised him with regard to that offer.[5] The justice court also thoroughly canvassed appellant regarding his waiver.

Third, appellant entered his guilty plea approximately three weeks after a majority of the members of the sanity commission had found him competent. Nothing in the record demonstrates that his mental status suffered a decline in the intervening three weeks. We also note that the district court continued entry of appellant's plea one day to allow his regular standby counsel to attend the proceeding, and that appellant acknowledged having reviewed the guilty plea memorandum with his attorney. We conclude that the record does not reveal any information or facts raising a reasonable doubt as to appellant's competence at all relevant times and that the active role taken by appellant's standby counsel insured that the proceedings against him were fair.

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[5]Cf. Hollander v. State, 82 Nev. 345, 352, 418 P.2d 802, 806 (1966) (holding that a defendant who elected to represent himself was afforded a fair trial where counsel was required to remain in the courtroom and available to defendant at all times and provided assistance when called upon).

Next, appellant argues that he did not knowingly and voluntarily waive his right to counsel.[6] This claim lacks merit. "In reviewing whether a defendant waived his right to counsel with a full understanding of the disadvantages, this court gives deference to the decision of the trial judge, who is 'much more competent to judge a defendant's understanding than this court.'"[7] Further, our independent review of appellant's Faretta canvass reveals no error. The justice court sufficiently advised appellant of the dangers and disadvantages of self-representation, and, as stated above, appellant responded appropriately to questions asked by the justice court during the canvass. Finally, we are not convinced that the justice court abused its discretion by failing to reexamine appellant's waiver of counsel by conducting a second Faretta canvass after appellant returned from Lakes Crossing, where he was

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[6]Faretta, 422 U.S. at 818-19, 835 (recognizing that an accused has a Sixth Amendment right to represent himself but must satisfy the court that waiver of counsel is knowing and voluntary and the record should establish that the accused was made aware of the dangers and disadvantages of self-representation); see also Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 237-38 (1996).

[7]Tanksley v. State, 113 Nev. 844, 847, 944 P.2d 240, 242 (1997) (quoting Graves, 112 Nev. at 124, 912 P.2d at 238).

evaluated by the sanity commission.[8] We conclude that the justice court properly advised appellant of the dangers and disadvantages of self-representation and that appellant's waiver of counsel was knowing and voluntary.

Next, appellant argues that the district court abused its discretion in failing to hold a competency hearing. This claim is without merit. The district court entered its findings of competency pursuant to its recent receipt of the sanity commission's findings,[9] and neither the district attorney nor defense counsel requested a hearing regarding the report.[10] We conclude that the district court did not abuse its discretion in failing to hold a competency hearing and committed no error in entering findings of competency based upon the sanity commission's findings.

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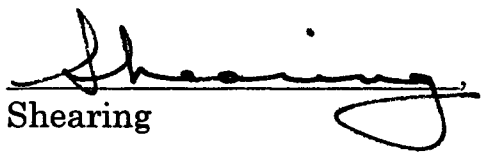
[8]See Graves, 112 Nev. at 125, 912 P.2d at 238 ("Even the omission of a canvass is not reversible error if 'it appears from the whole record that the defendant knew his rights and insisted upon representing himself.'") (quoting Cooley v. United States, 501 F.2d 1249, 1252 (9th Cir. 1974)).

[9]See Jones v. State, 107 Nev. 632, 638, 817 P.2d 1179, 1182 (1991) (holding that absent a reasonable doubt as to a defendant's competency, the district court is not required to order a competency examination).

[10]NRS 178.460(1) (providing that the trial judge "shall hold a hearing" with respect to the report of a sanity commission's findings "[i]f requested by the district attorney or counsel for the defendant within 10 days after the report . . . is sent to them").

Finally, appellant argues that his incarceration amounts to cruel and unusual punishment because he suffers from mental illness. We conclude that the record on appeal does not support appellant's request for relief on this claim.[11] Accordingly we,

ORDER the judgment of the district court AFFIRMED.[12]



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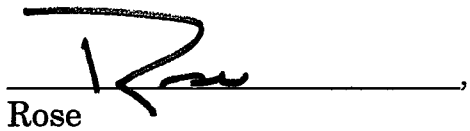
Shearing



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Rose

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[11]Cf. Maatallah v. Warden, Nevada State Prison, 86 Nev. 430, 470 P.2d 122 (1970) (recognizing that due process and concerns regarding the imposition of cruel and unusual punishment may forbid the confinement of a mentally ill person, not found guilty of a crime, without affording reasonable treatment).

[12]Appellant raised issues challenging the constitutionality of NRS 176.0913, the statute requiring genetic marker testing for certain enumerated offenders, in his fast track statement but not in his opening brief. We note that this court has recently rejected such constitutional challenges to NRS 176.0913. See Gaines v. State, 116 Nev. 359, 367-74, 998 P.2d 166, 171-75 (2000).

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General/Carson City
Clark County District Attorney
Connolly & Fujii
Clark County Clerk