

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH GOZDZIEWICZ, A/K/A
JOSEPH ANTONETTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49073

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of attempted escape and possession by a prisoner of tools to escape. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant to serve concurrent prison terms of 12-60 months and 24-60 months and ordered them to run concurrently with the sentence imposed in district court case no. C188823.

First, appellant contends that the district court abused its discretion by denying his request for a continuance. Appellant was incarcerated and representing himself, and he claims that he did not have access to the necessary tools to prepare and present his defense, and as a result, the district court's refusal to grant him a continuance violated his right to a fair trial and due process. We disagree.

The decision to grant or deny a motion for a continuance is within the sound discretion of the district court.¹ To determine whether the denial of a motion for a continuance was an abuse of discretion, this

¹See Batson v. State, 113 Nev. 669, 674, 941 P.2d 478, 482 (1997).

court balances “the prejudice to the district court of a continuance against the prejudice to the defendant of no continuance.”² This court will also weigh the prejudice to the defendant against the prejudice to the district court and the administration of justice if the continuance is granted.³

In the instant case, the record indicates that the district court granted appellant, over more than a two-year period, at least seven distinct continuances for a variety of reasons. Additionally, the district court ensured that appellant’s discovery requests were met and that he had access to his legal materials prior to the start of the trial. We also note that appellant cannot demonstrate that he was prejudiced by the denial of the last continuance request considering that, in his opening statement, he admitted that he attempted to escape. Therefore, we conclude that the district court did not abuse its discretion in denying the motion for a continuance.

Second, appellant contends that the district court erred by allowing him to represent himself at trial. Specifically, appellant claims that he “did not knowingly and intelligently relinquish the benefit of counsel.” We disagree.

“A criminal defendant has the right to self-representation under the Sixth Amendment of the United States Constitution and the

²Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000).

³See generally id.; see also Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 556-57 (1991).

Nevada Constitution.”⁴ The record as a whole must show that an accused wishing to represent him- or herself truly understood the dangers and disadvantages of self-representation so that the choice is made “with eyes open.”⁵ Further, “[t]he district court should inquire of a defendant about the complexity of the case to ensure that the defendant understands his or her decision and, in particular, the difficulties he or she will face proceeding in proper person.”⁶ The decision to exercise the right to self-representation “can be competent and intelligent even though the accused lacks the skill and experience of a lawyer,”⁷ and must be honored even when the decision ultimately works to the accused’s detriment.⁸ This court gives deference to a district court’s determination that the defendant waived his or her right to counsel while conscious of the dangers and risks of self-representation.⁹

We conclude that the district court did not abuse its discretion in allowing appellant to represent himself. Appellant does not challenge the sufficiency of the Faretta canvass, and our review of the record reveals

⁴Vanisi v. State, 117 Nev. 330, 337, 22 P.3d 1164, 1169 (2001); see also U.S. Const. amend. VI; Faretta v. California, 422 U.S. 806, 818-19 (1975); Nev. Const. art. 1, § 8, cl. 1.

⁵Faretta, 422 U.S. at 835 (citation omitted); see also Arajakis v. State, 108 Nev. 976, 980, 843 P.2d 800, 802-03 (1992).

⁶Vanisi, 117 Nev. at 341, 22 P.3d at 1172.

⁷Id. at 338, 22 P.3d at 1170.

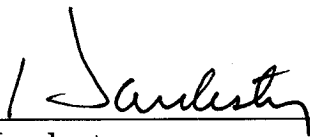
⁸Faretta, 422 U.S. at 834.

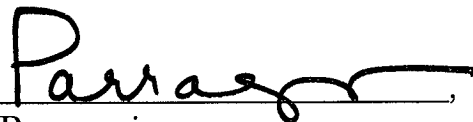
⁹See Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

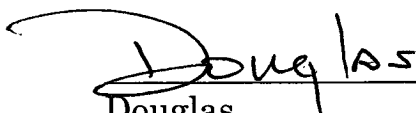
that the district court, on several occasions, discussed the dangers and disadvantages of self-representation with appellant. Additionally, throughout the proceedings, appellant demonstrated legal proficiency. And finally, we note that the district court appointed stand-by counsel to assist appellant.

Therefore, having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk