

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MANUEL LEDEZMA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49738

FILED

NOV 03 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea agreement, of trafficking in 28 grams or more of a controlled substance. First Judicial District Court, Carson City; James Todd Russell, Judge.

In September 2006, appellant Jose Manuel Ledezma was arrested by the Tri-Net Narcotic Task Force after he sold 53.1 grams of methamphetamine to a source cooperating with Tri-Net. Shortly after his arrest, INS placed an immigration hold on Ledezma, directing that he was to remain in custody.

Eventually, Ledezma entered an agreement to plead guilty to one count of trafficking in a controlled substance. Prior to his sentencing, Ledezma's attorney contacted Tri-Net, indicating that Ledezma was interested in providing substantial assistance pursuant to NRS 453.3405(2). Ledezma's attorney ultimately provided Detective Mitch Piers with a letter containing information from Ledezma, including "some names, vehicle descriptions, and a general location of a house."

At Ledezma's sentencing hearing, Detective Piers testified that the information provided by Ledezma was largely stale, and did not provide any facts not already known by his unit. Due to the INS immigration hold, Ledezma could not be released from jail to participate

in “buys” or to otherwise render assistance. Accordingly, the court found that no substantial assistance was rendered pursuant to NRS 453.3405(2), and sentenced Ledezma to a definite term of 25 years, with eligibility for parole after 10 years.

On appeal, Ledezma primarily contends that he is entitled to a new sentencing hearing, because NRS 453.3405(2) violates the Equal Protection Clause of the Fourteenth Amendment. NRS 453.3405(2) provides that

[t]he judge, upon an appropriate motion, may reduce or suspend the sentence of any person convicted of violating any of the provisions of NRS 453.3385, 453.339 or 453.3395 if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals or of any other person involved in trafficking in a controlled substance in violation of NRS 453.3385, 453.339 or 453.3395. The arresting agency must be given an opportunity to be heard before the motion is granted. Upon good cause shown, the motion may be heard in camera.

Ledezma takes issue with the fact that, because of the immigration hold placed by INS, he was unable to obtain his release from custody to make “buys” for police or otherwise provide substantial assistance as contemplated by NRS 453.3405(2). Thus, Ledezma contends that due to his status as an illegal alien, he was denied the opportunity to take full advantage of the provisions of NRS 453.3405(2).

To establish a successful equal protection claim, the defendant initially “has the burden of proving the existence of purposeful

discrimination” against a class of persons.¹ In other words, the defendant must show “that the decisionmakers in his case acted with discriminatory purpose.”² As indicated by the United States Supreme Court in McCleskey v. Kemp,

discriminatory purpose implies more than intent as a volition or intent as awareness of consequences. It implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.³

We conclude that Ledezma has not met his initial burden of demonstrating any type of purposeful discrimination by either the legislature, the police, or the courts in enacting and enforcing NRS 453.3405(2). It is true, as Ledezma argues, that those illegal aliens subject to an INS hold will be less able to provide police with substantial assistance due to their inability to leave jail to assist police by making “buys.” But, as indicated by this court in Parrish v. State, while defendants commonly provide substantial assistance by acting as police agents during “buys,” “substantial assistance, pursuant to the terms of the statute, may be rendered in other ways.”⁴ Specifically, this court noted that the requirements for substantial assistance could be met if a court

¹McCleskey v. Kemp, 481 U.S. 279, 292 (1987) (quoting Whitus v. Georgia, 385 U.S. 545, 550 (1967)).

²Id.

³Id. at 298 (internal quotations omitted).

⁴116 Nev. 982, 990, 12 P.3d 953, 957 (2000).

determined that the defendant provided law enforcement officers with useful information.⁵ Therefore, while undocumented aliens as a class may not be as successful as other defendants in utilizing the provisions of NRS 453.3405(2), they are not completely barred from seeking leniency by providing substantial assistance, as Ledezma attempted to do in this case. Further, while the possibility of INS holds may have a disparate impact on illegal aliens attempting to provide substantial assistance, there is no evidence that the legislature intended to discriminate against undocumented aliens. And, as indicated in McCleskey, purposeful discrimination requires proof that the legislature “selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.”⁶ Accordingly, we conclude that Ledezma has not met his burden of demonstrating purposeful discrimination.⁷

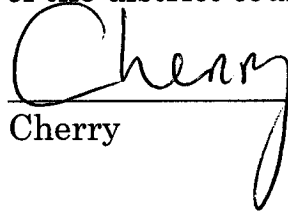
⁵Id. at 990, 12 P.3d at 958. We note that Ledezma initially refused to cooperate with drug enforcement officials while in custody and that a substantial period of time elapsed before Ledezma, through counsel, sought to take advantage of NRS 453.3405(2).

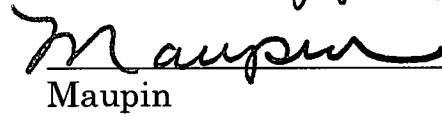
⁶481 U.S. at 298 (internal quotations omitted).


⁷We have also considered Ledezma’s other claims on appeal, including his arguments that the State acted in bad faith in reporting that Ledezma had not provided substantial assistance, that NRS 453.3405(2) violates the Due Process Clause, that his sentence was excessive, and that he was wrongfully denied bail, and conclude that these arguments lack merit.

Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. James Todd Russell, District Judge
Karla K. Butko
State Public Defender/Carson City
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk