

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY CRAIG ROSALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50584

FILED

MAR 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of five counts of discharging a firearm at or into an occupied structure and one count of aggravated stalking. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Gary Craig Rosales to serve five consecutive prison terms of 28-72 months and a consecutive prison term of 72-180 months.

Rosales contends that the district court improperly participated in the plea negotiations in violation of this court's decision in Cripps v. State, 122 Nev. 764, 137 P.3d 1187 (2006). The State concedes that the district court "essentially told Rosales to plead guilty," but argues that the improper comments amount to harmless error. We agree with Rosales and conclude that his conviction must be reversed and, on remand to the district court, he be given the opportunity to withdraw his guilty plea.¹

¹Rosales also contends the district court (1) abused its discretion by "predetermining" his sentence and relying on uncharged conduct; (2) erred by allowing impermissible victim impact testimony; (3) improperly
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In Cripps, this court adopted a bright-line rule precluding a trial judge from participating in plea negotiations between the State and the defense in a criminal prosecution because such participation creates an inherent risk of improper judicial coercion of a guilty plea. Id. at 770, 137 P.3d at 1191. We recognized one exception to that rule: the court may indicate whether it would be inclined to follow the parties' proposed sentencing recommendation. Id. at 770-71, 137 P.3d at 1191.

Here, we conclude that the district court violated the rule announced in Cripps. During a hearing on a pretrial motion, the parties were discussing moving the trial date when the district court directly addressed Rosales, stating:

The evidence against you is absolutely overwhelming. If I were a member of that jury, if your mother was a member of that jury, she would find you guilty beyond a reasonable doubt, Mr. Rosales. That's what I'm saying. You are leading your lawyer on a wild goose chase. You're leading yourself on a wild goose chase. And to go through the trial, in my humble opinion, is a waste of time, a waste of resources, time and energy.

...

In my opinion, the evidence is overwhelming for you to attempt to – and waste the taxpayers' money of the State of Nevada. You're not paying

... continued

accepted his plea despite concerns about his competency; and (4) committed cumulative error. In light of the disposition of this appeal, we need not address these issues. However, the district court's inflammatory comments during sentencing warrant assignment to a different judge on remand.

for it out of your own pocket. You're not paying for the psychiatrist, psychologist, the lawyer, the time.

The district court proceeded to encourage Rosales to discuss the matter with his mother and his attorney, because "[t]his is a very serious matter. And just because you're scared and just because he's scared doesn't mean that we can't do the right thing." Less than one week later, Rosales was back in court and defense counsel informed the district court that he was now amenable to negotiations. The following exchange took place:

THE COURT: Okay. I'm encouraging it. You understand, Mr. Rosales; correct? After the hearing that we had Friday, I want you to keep talking.

THE DEFENDANT: I do, Your Honor.

THE COURT: Okay. Good. And mom is still here? That helps.

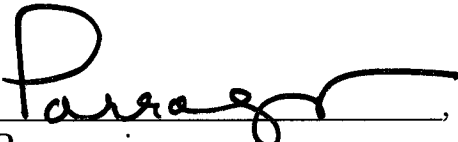
At the change of plea hearing, the district court referred to its previous comments and addressed Rosales:

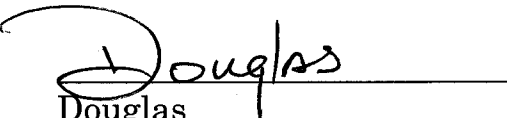
THE COURT: You know, I talked to you very openly. . . . [W]hen I said to you that the evidence was overwhelming, "Why are you doing this? Talk to your mom. Talk to counsel," did any of that influence you to the point where: Oh, my God, the judge is mad at me. I better plead guilty to this. Do you see what I'm saying?

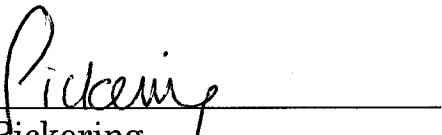
THE DEFENDANT: Well, I didn't take it as you were mad, but you were just opening my eyes to the facts.

Based on all of the above, we conclude that the district court's involvement in the plea negotiations was improperly coercive and an inexcusable violation of Cripps. Therefore, we conclude that Rosales must be given the opportunity to withdraw his guilty plea, and we

ORDER the judgment of conviction REVERSED AND
REMAND this matter to a different district court judge for proceedings
consistent with this order.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Second Judicial District Court, Chief Judge
Hon. Steven R. Kosach, District Judge
Thomas L. Qualls
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk