

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH ROBERT STAPP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52687

JOSEPH ROBERT STAPP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52802

FILED

MAY 11 2009
TRACIE R. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from two separate judgments of conviction. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. We elect to consolidate these appeals for disposition purposes only. NRAP 3(b).

Pursuant to guilty pleas in two different cases, the district court convicted appellant Joseph Robert Stapp of one count of grand larceny and two counts of burglary. The district court sentenced Stapp to three concurrent prison terms totaling 48 to 120 months.

Stapp contends that the district court violated his constitutional right to effective assistance of counsel by refusing to allow defense counsel to present mitigating evidence during sentencing. See NRS 176.015(2)(a). Stapp claims that the district court did not "interrupt nor chastise" the State during its remarks, but "impatiently mocked" defense counsel when he attempted to present mitigating "evidence in direct contrast to the suggestions made by the State." Quoting Cameron v.

State, Stapp also claims “that the conduct of the district court judge demonstrated that she ‘closed his or her mind to the presentation of all the evidence.” 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). The record on appeal does not support Stapp’s contention.

At sentencing, the State asked the district court if it could argue both cases together. The district court responded, “Sure, that’s fine, but you’ve given away the right to habitual treatment.” During its discussion of one of the cases, the State remarked, “It’s a little worse than your regular K-Mart burg/grand larceny in that when he’s confronted when he tries to escape he pulls out his Mace and sprays the security guards in the face with Mace to try to facilitate his escape.” At the conclusion of the State’s sentencing argument, the district court informed Stapp that it had read the letter that was attached to the presentence investigation report and the letter that Stapp sent to Judge Bell. The district court then allowed Stapp to read a prepared statement of allocution without interruption.

When Stapp finished reading his statement, defense counsel presented argument in mitigation. Counsel argued that he did not understand why the State initially sought a large habitual criminal adjudication, and the district court remarked “the parties have stipulated that he will not be sentenced as a habitual criminal in either case. The State has stipulated that the cases and the counts will run concurrent one with another. So I don’t know why you are talking about habitual criminal status.” Counsel then proceeded to argue that Stapp did not commit a robbery at the K-Mart store, thereby precipitating the following colloquy:

THE COURT: He didn’t plead to robbery. He pled to three counts of burglary, he pled to one count of

grand larceny and two counts of burglary, so why are we talking about robbery?

[DEFENSE COUNSEL]: Because this case frustrated me from the beginning.

THE COURT: I guess if it frustrated you it's going to frustrate the hell out of the rest of us, so just argue at length, sir.

Defense counsel finished his argument without further interruption. Thereafter, the district court laid out its reasons for its sentencing decision, clearly indicating that it had considered Stapp's statement of allocution and defense counsel's arguments.

Given this record, we conclude that Stapp's contention that the district court rendered defense counsel ineffective through its interruptions and comments, refusal to admit mitigating evidence, and obvious bias is without merit.

Stapp also contends that the district court erred by not allowing his father, Robert Stapp, the victim of one of his residential burglaries, to speak at sentencing. Quoting Wood v. State, Stapp contends that "NRS 176.015 creates in certain defined 'victims' the undeniable right to appear and express their views concerning the crime, the person responsible, and the impact on the victim." 111 Nev. 428, 430, 892 P.2d 944, 946 (1995). Stapp asserts that "[t]he district court was advised, 'Mr. Stapp's father was one of the victims in the other case. He's actually here today. I don't know if you want to hear from him, but he is here showing support for his son.' However, in contravention of the clear mandates of NRS 176.015, the court never allowed Robert Stapp to speak." The record on appeal does not support Stapp's contention.

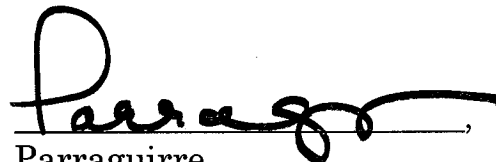
At sentencing, the victim did not indicate that he wished to speak, the State did not request that the victim be allowed to speak, and

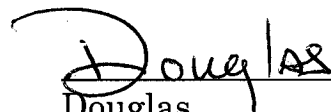
Stapp did not request that the victim be allowed to speak. Defense counsel informed the district court that the victim was present, he was there to show support for Stapp, and he would provide Stapp with a job if Stapp was placed on probation.

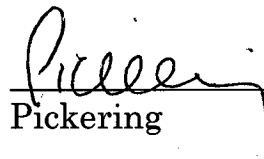
This record does not support Stapp's contention that the district court deprived the victim of his right to express his views before the sentence was imposed. Rather, it indicates that the victim was present to show support for his son and that defense counsel spoke on the victim's behalf. See NRS 176.015(3). Accordingly we conclude that this contention is without merit.

Having considered Stapp's contentions and concluded that they are without merit, we

ORDER the judgments of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 15, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk