IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDY MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53013

FILED

JAN 08 2010

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 of burglary and one count of battery constituting domestic violence with the use of a deadly weapon and resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant first argues that the district court failed to adequately investigate his competency prior to granting his motion to represent himself.[1] A defendant must be competent to waive his Sixth Amendment right to represent himself, Faretta v. California, 422 U.S. 806, 835 (1975); that is, he must have "'a rational as well as factual understanding of the proceedings.'" Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

The record contains nothing that would raise a doubt in the trial judge's mind as to appellant's competence. See Williams v. State, 85

[1]We note that appellant does not argue that he was incompetent to waive that right.

Nev. 169, 174, 451 P.2d 848, 852 (1969) (duty to investigate arises when district court doubts defendant's competence); NRS 178.405. First, appellant merely speculates that the district court did not review his mental health record from the prior proceeding. Second, appellant responded during his Faretta colloquy that he was not taking any medications and had no history of mental health treatment. Third, although appellant asked no questions of witnesses or jurors and made no objections, his ineffectiveness as his own counsel is not alone sufficient to raise a doubt in the trial judge's mind as to his competence. See Godinez, 509 U.S. at 399-400. Finally, appellant's contention that he did not understand the amended information is irrelevant as to whether he had the mental ability to understand the proceedings. See id. at 401 n.12 (competency refers to the ability to understand; "knowing and voluntary" refers to actual understanding). Accordingly, we conclude that the district court did not abuse its discretion, see Williams, 85 Nev. at 174, 451 P.2d at 852, and therefore deny appellant's claim on this basis.

Appellant next argues that the district court erred in granting the State's motion to amend the information on the first day of trial. Appellant did not object[2] to the amendment below as required by NRS 174.105(1). Absent good cause, an appellant may not challenge for the first time on appeal an amendment to an information. NRS 174.105(2); Roseneau v. State, 90 Nev. 161, 162-63, 521 P.2d 369, 369-70 (1974). Because appellant has offered no explanation to demonstrate good cause, we conclude this claim is waived.

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[2]Appellant only moved to continue trial, which, as discussed below, was not improperly rejected by the district court.

Appellant next argues that the district court violated his rights in not subjecting the amended information to the preliminary hearing process. Appellant had previously unconditionally waived his right to a preliminary hearing, see NRS 173.035(1)(b), and did not reassert that right when the information was amended. See United States v. Hocker, 268 F. Supp. 864, 870 (D. Nev. 1967) (the habeas process of NRS 34.500 protects a defendant's right to have a probable cause determination). Accordingly, we conclude that no relief is warranted on this basis.

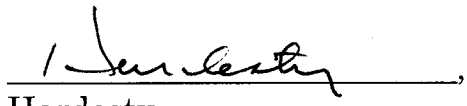
Appellant next argues that the district court erred in not arraigning him on the amended information. Where, as here, a defendant proceeds to trial without objection, he waives formal arraignment. Snyder v. State, 103 Nev. 275, 279, 738 P.2d 1303, 1306 (1987). We therefore conclude no relief is warranted on this basis.

Appellant next argues the district court abused its discretion when it denied his motion to continue trial after granting the State's motion to amend the information. The district court denied appellant's motion, noting appellant's insistence on the short-set trial date and expressing its disinclination to continue the trial absent a problem with witness availability. Appellant has not stated what additional information would have resulted from a continuance and has therefore failed to demonstrate prejudice from the denial of his motion. See Rose v. State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). Accordingly, we conclude the district court did not abuse its discretion, see Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978), and deny appellant's claim on this basis.

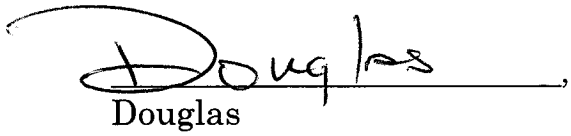
Finally, appellant argues he was prejudiced when the prosecutor misled the district court regarding the possible penalties based on the amended information. To the extent the prosecutor misled the district court as to the possible penalties, appellant nevertheless fails to demonstrate prejudice at trial. Accordingly, we conclude no relief is warranted on this basis.

In light of the foregoing, we

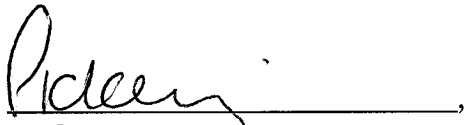
ORDER the judgment of the district court AFFIRMED.



_____, J.
Hardesty



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk