

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO ARIANDA CUMPLIDO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34815

FILED

DEC 20 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of second degree murder. The district court sentenced appellant to serve two concurrent terms of twenty-five (25) years in prison with a minimum parole eligibility of ten (10) years.

Appellant first challenges the district court's denial of his proper person motion to dismiss counsel. Appellant claims that he was entitled to an evidentiary hearing on the claims of ineffective assistance of counsel raised in the motion. We disagree.

It is well-settled that a criminal defendant is not entitled to reject court-appointed counsel and obtain substitution of other counsel at public expense absent a showing of adequate cause. *Thomas v. State*, 94 Nev. 605, 584 P.2d 674 (1978). A defendant's general loss of confidence or trust in counsel alone is not adequate cause for the appointment of new counsel. *Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985). The motion filed by appellant did not include any specific factual allegations in support of his general claims of ineffective assistance. We therefore conclude that appellant was not entitled to an evidentiary

hearing. Cf. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Appellant next challenges the district court's denial of his proper person presentence motion to withdraw his guilty plea. After reviewing the record, we conclude that this matter must be remanded for an evidentiary hearing.


The district court apparently denied the motion after concluding that appellant had abandoned the motion by indicating that he did not want to go to trial. However, appellant made that statement after the district court solicited opinions from other defense attorneys in the courtroom as to whether they would advise appellant to plead guilty or go to trial. After hearing those attorneys, who were not familiar with the case, indicate that they would advise appellant to plead guilty, appellant apparently believed that no attorney would help him go to trial and that he might as well give up on his motion. We conclude that events at the hearing on the motion unfairly pressured appellant into giving up his motion and that it cannot be said that appellant voluntarily abandoned his motion.

Moreover, after reviewing the motion filed by appellant, we conclude that it contained sufficient specific factual allegations in support of one of his claims to warrant an evidentiary hearing. In particular, appellant, who does not read English, claimed that his attorney did not read the entire plea agreement to him and indicated that the attorney failed to inform him that probation was not available. Although this information was contained in the written plea agreement, appellant had to rely on his attorney to read that agreement to him. Moreover, the district court did not address the availability of probation when it canvassed appellant regarding the guilty plea. Under the circumstances,

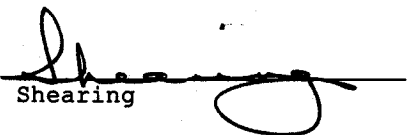
appellant has alleged specific factual allegations that, if true, would entitle him to relief. See Skinner v. State, 113 Nev. 49, 930 P.2d 748 (1997); Meyer v. State, 95 Nev. 885, 603 P.2d 1066 (1979). We therefore conclude that appellant is entitled to an evidentiary hearing on this claim. Cf. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

Accordingly, we remand this matter to a different district court judge for an evidentiary hearing on appellant's claim that he was not aware that probation was not available. If the court determines that the claim has merit, the court shall permit appellant to withdraw his guilty plea.¹


It is so ORDERED.



Maupin J.



Shearing J.



Becker J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

¹We conclude that the other claims in the motion to withdraw the guilty plea are not supported by specific factual allegations that, if true, would entitle appellant to relief.