

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM HENRY LAGORIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53984

FILED

DEC 03 2009

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 guilty plea, of diverting construction contract funds. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant William Henry Lagorio to serve 12 to 32 months in prison, suspended execution of the sentence, and placed Lagorio on probation for a period not to exceed 60 months.

Lagorio first argues that the district court abused its discretion by imposing 6 months of house arrest as a condition of probation. We conclude that this claim lacks merit. Lagorio did not object to this condition below and he has not demonstrated that the district court exceeded its broad discretion in imposing conditions of probation. See NRS 176A.400(1); Creps v. State, 94 Nev. 351, 360-61, 581 P.2d 842, 848-49 (1978).

Lagorio next argues that the district court abused its discretion in fixing the amount of attorney fees that he must pay (\$1,000) and a specific date by which the attorney fees must be paid. We conclude that this claim lacks merit. As to the amount imposed, NRS 178.3975(1) gives the district court discretion to "order a defendant to pay all or any

part of the expenses incurred by the county . . . in providing the defendant with an attorney.” Lagorio did not object to the amount of attorney fees and he has not demonstrated that the district court abused its discretion in fixing the amount of attorney fees. As to the deadline, NRS 178.3975(1) provides that the district court “may direct the defendant to pay the expenses in installments,” but nothing in the statute precludes the court from requiring the defendant to pay the expenses by a specific date. As with the amount imposed, Lagorio did not object to the deadline and he has not demonstrated an abuse of discretion by the district court.¹

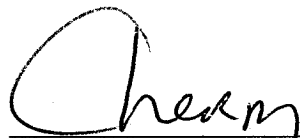
Although we affirm the judgment of conviction, the district court’s conduct during the sentencing hearing warrants further comment. Our review of the sentencing transcript reveals a myriad of intemperate comments by the district court judge. For example, when the defendant asked to make a statement at sentencing, the district court responded, “Maybe. I’ve got to give you the right to say something by statute, but I’m debating that as to whether or not I want to let you say anything.” The district court then inquired how long Lagorio had been blind and upon being given an answer, the judge inquired, “You’ve been using people for 22 years because your [sic] blind, huh?” The district court continued in this vein, suggesting that a sighted defendant would face a harsher penalty for the same conduct, despite every indication in the record that Lagorio had no criminal record and had, in the words of the probation


¹We note that should Lagorio be financially unable to pay the attorney fees by the fixed date, he may seek relief in the district court under NRS 178.3975(3) provided that he “is not willfully or without good cause in default in the payment thereof.”

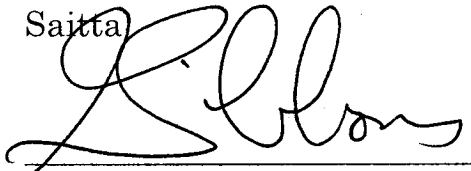
representative, “readily admit[ted] culpability in this case.” The less than judicial demeanor continued throughout the sentencing proceeding. We admonish the district court judge to refrain from similar conduct in the future. See NCJC Canon 2A (“A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”); NCJC Canon 3B(4) (“A judge shall be patient, dignified and courteous to litigants . . . with whom the judge deals in an official capacity . . .”). The judge’s comments do not however, warrant reversal as the sentence imposed is well within the statutory limits, see NRS 624.750(4)(b), and grants Lagorio the benefit of probation.

Having considered the issues raised on appeal and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk