

IN THE SUPREME COURT OF THE STATE OF NEVADA

HEYDEMAN ARMANDO ARGUETA-
GODOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55528

FILED

SEP 09 2010

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING SENTENCE AND REMANDING

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of attempted second-degree kidnapping and luring a child. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Heydeman Armando Argueta-Godoy contends that the district court violated his due process rights by considering his nationality or ethnicity in its sentencing determination. A district court violates a defendant's due process rights if it bases its sentencing decision, in part, on the defendant's nationality, ethnicity, or status as an illegal immigrant. Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998), distinguished by Ruvalcaba v. State, 122 Nev. 961, 965, 143 P.3d 468, 471 (2006) (a district court does not violate Martinez by considering a criminal defendant's status as an illegal immigrant for the limited purpose of deciding whether to grant probation). Here, the district court's remarks went beyond a passing reference to Argueta-Godoy's illegal immigration status, suggested that the sentencing determination was influenced by

Argueta-Godoy's illegal immigration status, and failed to give an appearance of justice. See id. at 738, 961 P.2d at 145-46. Accordingly, we

VACATE the sentence imposed in the judgment of conviction AND REMAND this matter to the district court for resentencing before a different judge.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Chief Judge Second Judicial District Court
Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk