IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLEY ANTHONY MATANZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57096

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, for driving under the influence of a controlled substance causing death and/or substantial bodily harm. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Charley Matanza argues that his guilty plea was not knowing and voluntary. We conclude that this claim lacks merit. Matanza cannot raise claims that attack the validity of the plea on direct appeal. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), limited by Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). The record does not indicate that Matanza challenged the validity of his guilty plea in the district court; therefore, his claim is not appropriate for review on direct appeal from the judgment of conviction. Id.

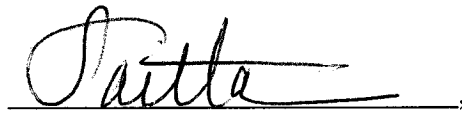
Second, Matanza argues that the district court erred by failing to sufficiently inquire into a potential conflict of interest and in denying his motion for new counsel made at his sentencing hearing. This court reviews the district court's denial of a motion to substitute counsel for an

abuse of discretion. Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). There was no abuse of discretion based on the factors set forth in Young: (1) Matanza did not demonstrate a complete breakdown of the attorney-client relationship; (2) the district court made a sufficient inquiry into the substance of Matanza's complaints about counsel; and (3) Matanza did not inform the court that he wanted substitute counsel until his sentencing hearing, making the request untimely. Id. at 968-69, 102 P.3d at 576.

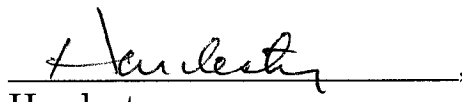
Third, Matanza contends that the district court imposed an excessive sentence constituting cruel and unusual punishment. See U.S. Const. amend. VIII. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Matanza has not alleged that the district court relied solely on impalpable or highly suspect evidence or alleged that the relevant sentencing statutes are unconstitutional. See Denson v. State, 112 Nev. 489, 492-93, 915 P.2d 284, 286-87 (1996); see also Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). Matanza's sentence of 72 to 240 months in prison falls within the parameters provided by the relevant statute, see 2007 Nev. Stat., ch. 327, § 71, at 1453-54 (NRS 484.3795(1) now codified as NRS 484C.430(1)), and the sentence is not "so unreasonably disproportionate to the offense as to shock the conscience," Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); see also Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). Therefore, we conclude that the district court did not abuse its discretion at sentencing and the sentence imposed does not constitute cruel and unusual punishment.

Having considered Matanza's contentions and concluding that they lack merit, we

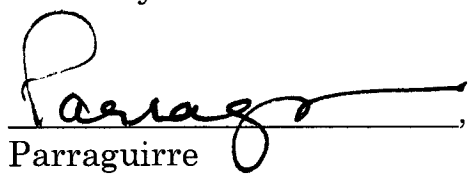
ORDER the judgment of conviction AFFIRMED.



Saitta, J.



Hardesty, J.



Parraguirre, J.

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk