

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELECIO MARROQUIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35425

**FILED**

OCT 11 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of sexual assault and one count of lewdness with a child under age fourteen. The district court sentenced appellant Melecio Marroquin to serve life imprisonment with the possibility of parole and a concurrent twenty-five-year imprisonment term.

Marroquin entered his guilty plea on February 16, 1999. Prior to sentencing, Marroquin indicated to his counsel that he wanted to pursue a motion to withdraw the plea. On November 29, 1999, counsel filed a motion to withdraw as counsel based on Marroquin's desire to withdraw his plea. Counsel indicated that Marroquin intended to base his motion to withdraw the plea on counsel's alleged "failure to adequately explain to him in his native tongue the Guilty Plea Agreement." Counsel indicated that Marroquin would require the services of a court-appointed attorney if he wanted to withdraw his plea.

On November 30, 1999, the court held a hearing immediately before sentencing concerning counsel's motion to withdraw and Marroquin's request to withdraw his plea. The court afforded Marroquin an opportunity to be heard concerning the reasons supporting his request to withdraw his plea. Marroquin explained that he had been misled, primarily by his counsel, concerning the guilty plea. Marroquin claimed that he was told to sign papers involving the plea without having the

papers read to him in either English or Spanish. Marroquin stated that he thought he was going to be released. The court denied counsel's motion to withdraw and refused to allow Marroquin to withdraw his plea.

On appeal, Marroquin claims that the district court erred by considering the motion to withdraw the plea. Marroquin complains that he did not have the opportunity to properly present such a motion to the district court and that he did not have the effective assistance of counsel in pursuing such a motion due to the court's action.

Defense counsel's motion to withdraw from the case was premised on Marroquin's desire to pursue a motion to withdraw the guilty plea on grounds implicating the efficacy of counsel. Defense counsel indicated that counsel could not assist Marroquin in presenting such a motion. Thus, the issue here is essentially whether or not the district court was required to order the substitution of counsel to assist Marroquin in pursuing his motion.

If there was reason to believe that Marroquin had potentially legitimate grounds for withdrawal of the plea, then the court was required to appoint new counsel to assist Marroquin in pursuing his motion since, in such circumstances, his counsel could not properly continue to represent him. However, the district court has discretion in considering a request for substitution of counsel and, absent a showing of adequate cause, such a request may be denied. See Baker v. State, 97 Nev. 634, 637 P.2d 1217 (1981), overruled on other grounds by Lyons v. State, 106 Nev. 438, 445, 796 P.2d 210, 214 (1990); Junior v. State, 91 Nev. 439, 537 P.2d 1204 (1975).

Here, Marroquin failed to present even arguably legitimate grounds to support his request to withdraw his plea. His complaints about the plea are belied by the record. Consequently, the district court was not required to substitute

counsel to assist him in pursuing a motion to withdraw his plea. Nor was defense counsel ineffective for failing to assist Marroquin in pursuing a frivolous motion.<sup>1</sup> Marroquin's statements at the plea canvass flatly contradicted his complaints about not being properly informed concerning the plea agreement. At the plea canvass, an interpreter assisted Marroquin. Marroquin specifically represented to the court that the written agreement had been read to him in Spanish before he signed it and that he fully understood everything contained therein. Further, Marroquin's contention that he believed that he would be released is not credible, given the plea canvass, the written plea agreement, and the fact that Marroquin's custodial confinement continued for several months after he entered his plea.

The California Supreme Court has observed that "[a] series of attorneys presenting groundless claims of incompetence at public expense, often causing delays to allow substitute counsel to become acquainted with the case, benefits no one." *People v. Smith*, 863 P.2d 192, 200 (Cal. 1993). In this case, the interests of judicial economy and respect for Marroquin's constitutional rights were served when the court denied Marroquin's request to withdraw his plea and counsel's motion to

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<sup>1</sup>This case is distinguishable from *Beals v. State*, 106 Nev. 729, 802 P.2d 2 (1990), where this court recognized that the defendant has the right to counsel at a hearing on a pre-sentence request to withdraw a plea. In that case, the district court permitted defense counsel to withdraw without appointing another attorney to assist the defendant and without properly canvassing the defendant to determine whether he knowingly and intelligently waived his right to counsel. *Id.* at 730-32, 802 P.2d at 3-4. The court then resolved the defendant's motion to withdraw his plea and proceeded with sentencing, despite the fact that the defendant was not represented by counsel. *Id.* at 730-31, 802 P.2d at 3-4.

withdraw. Accordingly, we affirm the judgment of the district court.<sup>2</sup>

It is so ORDERED.

Maupin, J.  
Maupin

Leavitt, J.  
Leavitt

Becker, J.  
Becker

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

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<sup>2</sup>This is not to say, as Marroquin seems to suggest, that he is precluded from ever raising a legitimate challenge to his plea. If legitimate grounds exist, Marroquin is not precluded from bringing a post-conviction challenge to the validity of his plea.