IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY LEE JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65191

ORDER OF AFFIRMANCE

This is an appeal pursuant to the remedy provided for in *Lozada v. State*, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). Eighth Judicial District Court, Clark County; Valerie Adair, Judge. Jones was convicted, pursuant to a jury verdict, of conspiracy to commit robbery and three counts each of burglary and robbery.[1]

First, Jones contends that the district court violated his due process right to a fair trial and an impartial jury by failing "to properly investigate his competency to assist counsel throughout the proceedings." To support his claim of "apparent incapacity," Jones points out that he "demonstrated a history of acting out in court," including, but not limited to, throwing documents at the prospective jury panel. We disagree with Jones' contention.

"[U]nder Nevada statutory law a defendant is incompetent to stand trial if he *either* 'is not of sufficient mentality to be able to understand the nature of the criminal charges against him' or he 'is not

[1]According to both parties, transcripts of Jones' two-day trial were destroyed and not available for review or consideration during the litigation of his *Lozada* petition below or for purposes of this appeal.

able to aid and assist his counsel in the defense.'" *Calvin v. State*, 122 Nev. 1178, 1182-83, 147 P.3d 1097, 1100 (2006) (adopting the federal standard for competency announced in *Dusky v. United States*, 362 U.S. 402 (1960)) (quoting NRS 178.400(2)). "A district court's determination of competency after a competency evaluation is a question of fact that is entitled to deference on review. Such a determination will not be overturned if it is supported by substantial evidence." *Id.* at 1182, 147 P.3d at 1099 (footnotes omitted). Here, psychologists found Jones competent to stand trial on two separate occasions prior to trial. In its order denying the *Lozada* petition, the district court found that Jones' "competency to stand trial was never really in question," while also noting that the "disrespectful" behavior directed towards the court and counsel "was by choice and not a reflection on his competence." The district court found that Jones "was only attempting to inject error into the court proceedings," and there was no reason for the district court to inquire further into the matter of his competency. The district court minutes indicate that the court "took care to try to weed out any juror who indicated by [defendant's] behavior he would not get a fair trial." Moreover, there is no indication in the record provided on appeal that Jones moved for either a continuance or a mistrial, raised the matter of his competency at trial, or requested an additional competency evaluation after his outburst on the first day of trial. We conclude that Jones fails to demonstrate that the district court violated his due process right to a fair trial and impartial jury.

Second, Jones contends that the district court violated his due process right to a fair trial and an impartial jury by restraining him during the first day of trial. Jones claims that he was "unduly prejudiced"

when he was "handcuffed and gagged in response to his invocation of his right to self-representation" and that he "did not engage in behavior sufficiently egregious to warrant such measures." We disagree.

"District courts are allowed sufficient discretion to determine whether to physically restrain a defendant during the guilt phase of a trial after carefully balanc[ing] the defendant's constitutional rights with the security risk that the defendant poses." *Nelson v. State*, 123 Nev. 534, 545, 170 P.3d 517, 525 (2007) (quotation marks and citation omitted). The use of visible restraints during trial is unconstitutional "unless the use is justified by an essential state interest." *Hymon v.* State, 121 Nev. 200, 208, 111 P.3d 1092, 1098 (2005) (citing *Deck v. Missouri*, 544 U.S. 622, 624 (2005)). Here, Jones was admonished on several occasions by more than one district court judge that his persistently aggressive, disruptive behavior would result in the use of restraints. In resolving Jones' *Lozada* petition, the district court found that he "exhibited a consistent pattern of disrespectful, abusive, and violent behavior in the courtroom," and noted that he physically and verbally threatened several defense attorneys, was removed from the courtroom on at least two occasions, used "derogatory and vulgar language" leading to the recusal of a district court judge, and referred to the trial judge as "Judge Hitler." The district court determined that "[g]iven the danger Defendant clearly posed in the courtroom, the trial court was well-within its discretion to impose restraints on Defendant." The district court also found that the decision to restrain Jones was not related to his desire to represent himself, but rather "due to security issues and his expressed unwillingness to abide by courtroom protocol." Based on the record before this court, we conclude that Jones

fails to demonstrate that the district court abused its discretion by restraining him during the first day of trial.

Third, Jones contends that the district court erred by denying his second request to represent himself at trial. We disagree. A criminal defendant has a constitutional right to represent himself at trial so long as he knowingly, voluntarily, and intelligently waives his right to counsel. *See Vanisi v. State*, 117 Nev. 330, 337-38, 22 P.3d 1164, 1169-70 (2001). A defendant's right to self-representation may be denied "if the request is untimely, equivocal, or made solely for purposes of delay or if the defendant is disruptive." *Id.* at 338, 22 P.3d at 1170. We review the district court's decision to deny a motion for self-representation for an abuse of discretion. *See Gallego v. State*, 117 Nev. 348, 362, 23 P.3d 227, 236-37 (2001).

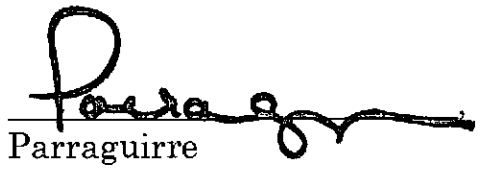
Jones' second request was made on the first day of trial and thus was untimely. According to the district court minutes, the "Court advised if [defendant] had asked to represent himself six weeks ago, Court would have canvassed him and appointed stand-by counsel." *See O'Neill v. State*, 123 Nev. 9, 17-18, 153 P.3d 38, 44 (2007) (district court did not err by failing to conduct a *Faretta* canvass or denying request for self-representation because it was untimely); *Lyons v. State*, 106 Nev. 438, 445-46, 796 P.2d 210, 214 (1990) (district court has discretion to find self-representation request untimely if it "is not made within a reasonable time before commencement of trial or hearing and there is no showing of reasonable cause for lateness of the request"), *abrogated on other grounds by Vanisi*, 117 Nev. at 341, 22 P.3d at 1171-72. Notably, more than a year prior to trial, Jones' first request to represent himself was *granted* by the district court after a canvass pursuant to *Faretta v. California*, 422 U.S.

806 (1975), but six months later, Jones changed his mind, no longer wished to represent himself, and requested the reappointment of counsel. In denying the *Lozada* petition, the district court found that Jones' untimely second request was solely "to cause further delay" and "represented an abuse of the right to self-representation because he was intending to, once again, disrupt the judicial process." We agree and conclude that the district court did not abuse its discretion by denying Jones' untimely request to represent himself at trial.

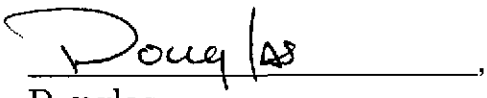
Finally, Jones contends that trial counsel was ineffective for failing to investigate or present evidence of his incapacity and object to the admission of hearsay evidence. In a previous order reversing a district court order denying Jones' appeal-deprivation claim, we remanded the matter "for the appointment of counsel to assist appellant in the filing of a post-conviction petition raising *all direct appeal issues* pursuant to the remedy set forth in *Lozada v. State*." *Jones v. State*, Docket No. 52443 (Order of Reversal and Remand, May 27, 2009) (emphasis added); *see also Jones v. State*, Docket No. 49525 (Order Affirming in Part, Reversing in Part and Remanding, November 8, 2007) (affirming district court's denial of appellant's ineffective-assistance-of-counsel claims and, among other things, reversing the summary denial of appellant's appeal-deprivation claim and remanding for a hearing on the issue). In its order denying the *Lozada* petition, the district court determined that Jones' ineffective-assistance-of-counsel claims were not properly raised and summarily dismissed them. We agree and conclude that the district court did not err in this regard. *See generally Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006) ("This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district

court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless."). Accordingly, we

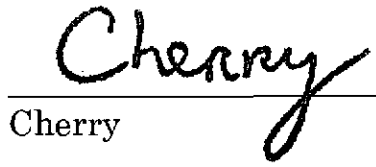
ORDER the judgment of the district court AFFIRMED.[2]



Parraguirre, J.



Douglas, J.



Cherry, J.

cc: Hon. Valerie Adair, District Judge
Law Offices of John P. Parris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Johnny Lee Jones

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[2]Jones has submitted a pro se "motion for leave to file a motion for an appeal conference." Jones has not been granted leave to file pro se documents. NRAP 46(b). Moreover, Jones is represented by counsel and has no constitutional right to represent himself in this appeal. *See Blandino v. State*, 112 Nev. 352, 914 P.2d 624 (1996); *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163 (2000). Accordingly, the clerk of this court shall return, unfiled the pro se motion received on October 29, 2014. Jones should address all concerns regarding this appeal to counsel and shall proceed through counsel in the prosecution of this appeal.