

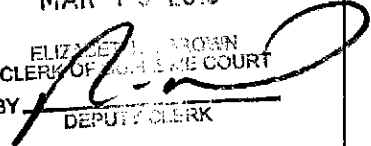
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES THEODORE SHARKEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75474-COA

FILED

MAR 18 2019

ELIZABETH L. BROWN
CLERK OF THE COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

James Theodore Sharkey appeals from a judgment of conviction, pursuant to a jury verdict, of battery constituting domestic violence, a category C felony. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Prior to trial, Sharkey sought to waive his right to counsel twice.¹ Each time, the district court conducted a *Faretta*² canvass of Sharkey explaining the risks and consequences of self-representation. After the first *Faretta* canvass, Sharkey chose to remain with his trial counsel. After the second *Faretta* canvass, Sharkey chose to represent himself and the district court granted his request. During a subsequent pre-trial hearing, however, the court warned Sharkey that he could lose his right to self-representation for disruptive behavior. Then, at trial, the court once again warned Sharkey that he could lose his right to self-representation if his disruptive behavior continued, but the right was never revoked.

¹We do not recount the facts except at necessary to our disposition.

²*Faretta v. California*, 422 U.S. 806 (1975).


On appeal, Sharkey argues for the first time that the district court had a duty to sua sponte revoke his right of self-representation because his disruptive behavior was harmful to his defense and the legal process.³ We disagree.

“This court will give deference to the district court’s determination that the defendant waived his . . . right to counsel with a full understanding of the disadvantages and clear comprehension of the attendant risks.” *Harris v. State*, 113 Nev. 799, 802, 942 P.2d 151, 153-54 (1997). Further, while a defendant’s right of self-representation may be denied if the defendant is disruptive, that decision is left to the district court to determine. See *Tanksley v. State*, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997). However, because Sharkey argues that the district court should have revoked its order allowing him to represent himself without citing any relevant authority, this court need not consider it. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (noting that this court need not


³Sharkey also briefly states that the waiver of his right to counsel was not made knowingly, voluntarily, or intelligently. However, he does not argue that the district court conducted an insufficient *Faretta* canvass, nor that his waiver was invalid when he made it. Instead, Sharkey argues that his lack of legal knowledge shows that his waiver was not knowingly made, and that his filing of several baseless pre-trial motions shows that he was not competent to represent himself. Sharkey’s arguments are unavailing. We determine the waiver’s sufficiency as of the time Sharkey made it—not during subsequent pre-trial motions or at trial. *Graves v. State*, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996) (regarding a sufficient *Faretta* canvass and waiver, “[t]he only question is whether the defendant ‘competently and intelligently’ chose self-representation, not whether he was able to ‘competently and intelligently’ represent himself” (quoting *Faretta*, 422 U.S. at 835-36)). Additionally, the constitutional scrutiny of the waiver only concerns Sharkey’s “clear comprehension of the attendant risks” of self-representation—not his ability to understand the law. *Id.*

address claims that are not cogently argued or supported by relevant authority). Further, we have found no authority for the proposition that the district court had a duty to sua sponte revoke his constitutional right to self-representation for being disruptive. *Cf. Vanisi v. State*, 117 Nev. 330, 338, 22 P.3d 1164, 1170 (2001) (holding that a defendant's right to self-representation *may* be denied if the "defendant is disruptive") (emphasis added); *see also Illinois v. Allen*, 397 U.S. 337, 343 (1970) (stating that "courts must indulge every reasonable presumption against the loss of constitutional rights").

Having found no error or an abuse of discretion, we
ORDER the judgment of conviction AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Jonathan E. MacArthur, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk