

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD DEAN LEVENTRY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79318-COA

FILED

JUL 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Harold Dean Leventry, Jr., appeals from a judgment of conviction, pursuant to a guilty plea, of trafficking in 28 grams or more of a schedule I controlled substance. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Leventry contends the district court abused its discretion in declining to reduce Leventry's sentence because he rendered substantial assistance to law enforcement. Specifically, Leventry argues the district court improperly required that his assistance result in an arrest or credible trial testimony as a prerequisite to finding substantial assistance.

NRS 453.3405(2) provides the district court may reduce or suspend the sentence of any person convicted of trafficking in a controlled substance "if the court finds that the convicted person rendered substantial assistance in the investigation or prosecution of any offense." The district court can exercise its discretion under this statute in two ways: First, the district court can determine whether the defendant has rendered substantial assistance; second, the district court can determine whether to reduce or suspend the sentence. *Parrish v. State*, 116 Nev. 982, 991, 12 P.3d 953, 958 (2000). We review the district court's decision to grant a sentence reduction pursuant to NRS 453.3405(2) for abuse of discretion. *Id.*

After conducting an evidentiary hearing on Leventry's motion regarding substantial assistance, the district court delivered its oral ruling.

The court explained that it considered the significance and usefulness of the assistance; the nature and extent, i.e., scope, of the assistance; and the risk of injury or danger to the defendant and his family by providing the assistance. Applying this approach, the district court then concluded Leventry's assistance was not likely substantial because it could only be useful through trial testimony, and Leventry could not be a credible trial witness. The district court did not require that Leventry's assistance result in an arrest or credible trial testimony. Thus, the record before this court does not support Leventry's contention.

Moreover, the district court further concluded that, even had Leventry rendered substantial assistance, the court would not have reduced or suspended Leventry's sentence in light of the number and types of his prior convictions. Leventry does not challenge this determination on appeal.

For the foregoing reasons, we conclude Leventry has not demonstrated the district court abused its discretion by denying his request for a reduced sentence based on substantial assistance. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk