

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORDANYS GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37985

FILED

NOV 08 2002

ORDER OF AFFIRMANCE

JANETIE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant Ordany Garcia to serve a prison term of 62 to 156 months. Garcia filed the instant appeal.

Garcia first contends that the district court abused its discretion in denying Garcia's motion for substitute counsel. Garcia claims that he was entitled to substitute counsel because his trial counsel was ineffective by: (1) failing to communicate with Garcia; (2) failing to investigate the case; and (3) forcing Garcia to plead guilty. We conclude that Garcia's contention lacks merit.

"A defendant is not entitled to reject his court-appointed counsel and request substitution of other counsel at public expense absent a showing of adequate cause for such a change."¹ The district court has

¹Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978) (quoting Junior v. State, 91 Nev. 439, 441, 537 P.2d 1204, 1206 (1975)).

discretion in considering a request for substitution of counsel and, absent a showing of adequate cause, such a request may be denied.²

In the instant case, the district court denied Garcia's motion for substitute counsel, finding that Garcia's guilty plea was entered knowingly and voluntarily, rather than forced by counsel, and that Garcia's trial counsel was "qualified" and "competent." The district court's findings are supported by the record. In particular, the district court thoroughly canvassed Garcia and ensured that Garcia understood the plea agreement prior to accepting his guilty plea. Further, Garcia failed to demonstrate sufficient cause for the appointment of new counsel because his claim that his trial counsel was ineffective lacked specificity and merit.³ We therefore conclude that the district court did not abuse its discretion by denying Garcia's motion for the appointment of new counsel.

Garcia also contends that the district court abused its discretion because the sentence imposed was too harsh. Specifically, Garcia contends that the district court failed to consider that Garcia had no prior felony convictions, did not hear arguments from defense counsel, and imposed a harsh sentence based solely on Garcia's insistence that he

²See 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).

³See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

be allowed to withdraw his guilty plea. We conclude that Garcia's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."⁵ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.⁶

In the instant case, Garcia has failed to prove that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Moreover, we note that the sentence imposed was within the parameters provided by the relevant statute.⁷ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

⁴See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

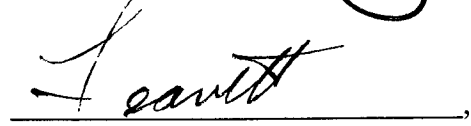
⁶Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

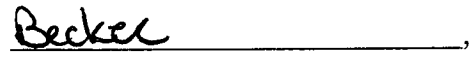
⁷See NRS 200.380(2) (providing for a prison term of 2 to 15 years).

Having considered Garcia's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk