

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EULALIO WHATLEY,

No. 38319

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 15 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of second-level trafficking in a controlled substance. The district court sentenced appellant to a prison term of 24 to 80 months.

Appellant's sole contention is that the district court abused its discretion in sentencing in not finding appellant had rendered substantial assistance to law enforcement authorities. Particularly, appellant contends that appellant rendered substantial assistance: (1) when he identified a drug dealer whom law enforcement was already aware of; and (2) made an unsuccessful attempt at a drug buy. We conclude that the district court did not abuse its discretion in finding that appellant failed to render substantial assistance.

"[A] judicial determination of whether or not substantial assistance has been rendered must be made by application of the statutory requirements [set forth in NRS 453.3405(2)] to the [evidence concerning the] defendant's efforts."¹ NRS 453.3405(2) authorizes the district court to

¹Parrish v. State, 116 Nev. ___, ___, 12 P.3d 953, 958 (2000).

reduce or suspend the sentence of any person convicted of trafficking in a controlled substance if "he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction" of any person involved in trafficking in a controlled substance.

In the instant case, the district court properly considered the factors in NRS 453.3405(2) in finding that appellant did not render substantial assistance. In fact, the district court stated:

The statute provides that where one provides substantial assistance to law enforcement authorities with regard to the arrest, identification or conviction of a drug trafficker, seller, or manufacturer, then you, Mr. Whatley, would be eligible for probation. At the moment, you stand ineligible.

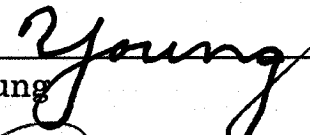
Based on all that I've heard, I know that Mr. Whatley attempted to provide substantial assistance, but nothing led to the arrest or conviction of anyone. The identification of [a male drug dealer] apparently, is a person that was already known to be in the drug culture to CNU, so what they really needed with regard to [the drug dealer] was a buy, some way to actually arrest or convict [him].

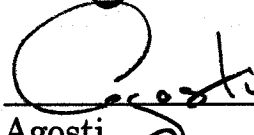
Although appellant argues that the district court misconstrued the statute by concluding that an arrest or conviction of a drug trafficker was required to support a finding of substantial assistance, the record belies appellant's argument. Indeed, the district court expressly stated that appellant would be eligible for probation if he had provided information that led to the "arrest, identification or conviction of a drug trafficker." Moreover, the district court's statement that the drug trafficker whom appellant identified would have to be arrested or convicted for the district court to find substantial assistance was not erroneous in light of the fact that the drug trafficker appellant identified was already known to law enforcement. Finally, the district court's finding that appellant did not provide substantial assistance is supported

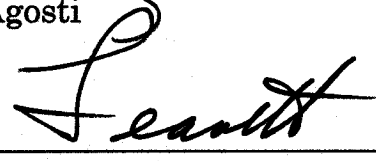
by substantial evidence. In particular, a detective from the narcotic's unit testified: (1) that appellant was unable to provide law enforcement with the names of drug traffickers he had dealt with in the past; and (2) that the information appellant provided never led to the arrest, identification, or conviction of anyone. Accordingly, the district court did not abuse its discretion in finding that appellant did not render substantial assistance.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.²


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

²On October 9, 2001, the State filed a motion to seal or redact portions of the rough draft transcript of the sentencing hearing, held on July 12, 2001. Because a motion to seal district court transcripts should be filed in the district court, we deny the motion without prejudice.