

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD J. GOHEEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39647

FILED

SEP 09 2002

ORDER OF AFFIRMANCE

JANEITE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of sexual assault (Count I) and sexual assault of a minor under 16 years of age (Count II). The district court sentenced appellant Richard J. Goheen to serve a prison term of 10 to 25 years for Count I and a consecutive prison term of 5 to 20 years for Count II.

Goheen entered his guilty plea on February 4, 2002. Prior to sentencing, Goheen informed his trial counsel that he wanted to pursue a motion to withdraw his guilty plea based on ineffective assistance of trial counsel. Accordingly, on February 13, 2002, trial counsel filed a motion to withdraw from representation. On February 19, 2002, the district court held a hearing on trial counsel's motion to withdraw. Although the district court appointed another public defender to represent Goheen, it expressly stated: "let the record reflect, I see no conflict at this time at all. I mean, the conflict is [that Goheen] doesn't get along with his Public Defender." On March 5, 2002, prior to sentencing, the district court denied both Goheen's motion for new counsel and presentence motion to withdraw his plea.

Goheen's sole contention on appeal is that the district court erred in appointing a second public defender to represent him, rather than independent conflict-counsel, because the attorneys in the public

defender's office had an actual conflict of interest. We conclude that Goheen's contention lacks merit.

In the instant case, trial counsel's motion to withdraw from the case was premised on Goheen's desire to pursue a motion to withdraw the guilty plea on grounds implicating the efficacy of counsel. In the motion to withdraw, trial counsel properly informed the district court that he could not assist Goheen in presenting a motion to withdraw based on his own allegedly ineffective representation. Thus, the issue here is essentially whether the district court was required to order the substitution of counsel to assist Goheen in pursuing his motion.

Where a defendant asserts legitimate grounds for withdrawal of the plea based on ineffective assistance of trial counsel, the district court is required to appoint new counsel to assist the defendant in pursuing his motion since, in such circumstances, trial counsel cannot properly continue representation.¹ However, the district court has discretion in considering a request for substitution of counsel and, absent a showing of adequate cause such as an actual conflict, a defendant's request may be denied.²

In the instant case, we conclude the district court did not abuse its discretion in refusing to substitute alternate counsel. Goheen failed to present specific and legitimate grounds to support his request to withdraw his plea based on ineffective assistance of trial counsel.

¹See SCR 157, SCR 160, SCR 178.


²See Baker v. State, 97 Nev. 634, 637 P.2d 1217 (1981), overruled on other grounds by Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990); Thomas v. State, 94 Nev. 605, 584 P.2d 674 (1978).


Further, Goheen's complaints about trial counsel and the validity of his plea are belied by the record. Specifically, in the plea agreement, Goheen represented that he discussed the charges, the possible defenses, and trial strategies with his counsel, and that he was satisfied with the services provided by his attorney. Consequently, the district court was not required to substitute counsel to assist him in pursuing a motion to withdraw his plea.

The California Supreme Court has observed that "[a] series of attorneys presenting groundless claims of incompetence at public expense, often causing delays to allow substitute counsel to become acquainted with the case, benefits no one."³ In this case, we conclude that the interests of judicial economy were served, and the district court did not violate Goheen's constitutional rights when it denied Goheen's request to withdraw his plea and appoint substitute counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

³People v. Smith, 863 P.2d 192, 200 (Cal. 1993).

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk