

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOE HONORIO NIETO-LOZANO,
Appellant,
Vs.
THE STATE OF NEVADA,
Respondent.

No. 40175

FILED
NOV 20 2002

NOV 20 2002

ORDER OF AFFIRMANCE

JANET N. BLOOM
CLERK OF SUPREME COURT
By: *J. Richard*
DEPUTY CLERK

This is an appeal, from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant Joe Honorio Nieto-Lozano to serve a prison term of 48 to 120 months.

Appellant's sole contention is that reversal of his conviction is warranted due to the fact that he was sentenced by a different judge in a separate department of the district court, rather than by the district judge who accepted his guilty plea. We conclude that appellant's contention lacks merit.

Generally, a criminal defendant is entitled to be sentenced by the district judge who accepts his guilty plea.¹ However, that general principle is subject to numerous exceptions, including where "[t]he judge . . . from other cause is unavailable to act."² Here, we conclude that appellant had no right to be sentenced by Judge Jack Ames, who had accepted his guilty plea, because Judge Ames had retired from the bench

¹See DCR 18; Marshall v. District Court, 79 Nev. 280, 382 P.2d 214 (1963).


²DCR 18(2)(a).


before the sentencing hearing and, therefore, was "unavailable to act." Moreover, because a replacement judge had not yet been named in Department 2, appellant could not, and had no right to be, sentenced in that department.³ Finally, we note that appellant was not prejudiced by change in the district judge prior to sentencing.⁴ The record reveals that Judge Memeo familiarized himself with appellant's case prior to exercising his sentencing discretion; he reviewed the presentence investigation report, listened to testimony from the victims, and heard arguments from counsel.

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

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

³See 4JDCR 2 ("In the event of the absence or the incapacity of a Judge . . . either Judge may temporarily act in the department of the other without specific assignment of the actions.").

⁴See State v. Carson, 597 P.2d 862 (Utah 1979) (holding that defendant not prejudiced by the appointment of a replacement judge for sentencing where the record revealed the judge was familiar with the defendant's record and the facts of the case).

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk