

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK JOHN DEGRASSE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40223

FILED

MAY 30 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Frank John Degrasse's post-conviction petition for a writ of habeas corpus.

On December 18, 1996, the district court convicted Degrasse, pursuant to a guilty plea, of two counts of using a minor in producing pornography. The district court sentenced Degrasse to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole after five years. Degrasse did not file a direct appeal.

On November 21, 1997, Degrasse filed a timely first proper person post-conviction petition for a writ of habeas corpus in the district court. In the petition, appellant claimed, among other claims, that he asked his attorneys to file a direct appeal and they failed to do so. The district court denied the petition without conducting an evidentiary hearing. Degrasse appealed, and this court remanded the petition for an evidentiary hearing.¹ The district court conducted an evidentiary hearing and again denied the petition. Degrasse appealed, and this court

¹See Degrasse v. State, Docket No. 32033 (Order of Remand, January 31, 2001).

determined that Degrasse's counsel was ineffective for failing to file a direct appeal on Degrasse's behalf after Degrasse asked him to, reversed the district court's order, and remanded for the appointment of counsel to assist Degrasse in filing a habeas petition raising direct appeal claims.² The district court denied the petition, and this appeal followed.

Degrasse has raised one claim on appeal: that the district court erred in allowing Degrasse to plead guilty while incompetent. Degrasse claims that the district court had knowledge that Degrasse was incompetent and pursuant to NRS 178.405 the district court should have suspended the proceedings and ordered a competency hearing. Degrasse claims he was incompetent because: (1) he was appointed two attorneys to represent him; (2) he was in ill health due to his age, emphysema, diabetes, and hypertension, and he suffered from seizures and received disability income; and (3) at the plea canvass he acted confused, failed to coherently answer questions, repeated answers, stated he was not guilty, continued to ask for probation although he was told it was not available, stated that he never read the constitution when asked if he understood his constitutional rights, and stated that the reason he entered a guilty plea was for "self preservation."

NRS 178.405 states that "[w]hen . . . the defendant is brought up for judgment, if doubt arises as to the competence of the defendant, the court shall suspend . . . the pronouncing of the judgment, . . . until the question of competence is determined." The doubt referred to in this statute is doubt in the mind of the trial court, rather than counsel or

²See Degrasse v. State, Docket No. 37715 (Order of Reversal and Remand, October 10, 2001); see also Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994).

others.³ Thus, a determination whether doubt exists rests largely within the discretion of the trial judge.⁴ Incompetent means “that the person is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel in the defense . . . against the pronouncement of the judgment.”⁵

We conclude that the district court did not abuse its discretion in failing to order a competency hearing.⁶ There is no indication in the record that Degrasse possessed an insufficient mentality to understand the nature of the charges against him or was unable to assist his counsel. At the plea canvass Degrasse was lucid, perceptive, and knowledgeable about the proceedings, the charges against him, and his sentence. Specifically, Degrasse stated that he understood the negotiations and the constitutional rights that he would be forfeiting by pleading guilty; he specifically asked the court if the minimum sentence was five years, and the court stated it was; he asked the court if it would consider a sentence of less than five years, and the court said that it could not pursuant to statute, and Degrasse stated that he understood; Degrasse stated that pleading guilty was a tough decision because if he pleaded guilty to two charges then he could only hope to get at best five years but if he pleaded

³See Williams v. State, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969) .

⁴See id.

⁵NRS 178.400; see also Riker v. State, 111 Nev. 1316, 1325, 905 P.2d 706, 711 (1995).


⁶See Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983).

charges then he could only hope to get at best five years but if he pleaded not guilty then he faced many more charges; he agreed that he was pleading guilty because he felt that the DA had sufficient evidence to convict him; and Degrasse also agreed with his attorney when he stated that Degrasse was pleading guilty because he was innocent and avoiding more charges.

Thus, the record reflects no reason for the district court to doubt Degrasse's competency and suspend the proceedings to order a competency hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Mary Lou Wilson
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk