

IN THE SUPREME COURT OF THE STATE OF NEVADA

AVELINO GARCIA ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40295

FILED

AUG 19 2003

ORDER OF AFFIRMANCE

JANETTE 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 two counts of level three trafficking in a controlled substance. The district court sentenced appellant Avelino Garcia Alvarez to serve concurrent prison terms of 10-25 years and life with the possibility of parole after 10 years, and ordered Alvarez to pay a fine of \$50,000.00 for each of the two counts.

Alvarez' sole contention is that the district court abused its discretion by finding that he had not rendered substantial assistance pursuant to NRS 453.3405(2) and therefore was not entitled to receive a sentence reduction. Alvarez argues that the district court violated the mandate of Parrish v. State, where this court stated that the sentencing court is required "to expressly state its finding concerning whether or not substantial assistance has been provided."¹ We disagree with Alvarez' contention.

NRS 453.3405(2) provides that the district court may reduce or suspend the sentence of any person convicted of trafficking in a controlled substance "if he finds that the convicted person rendered

¹116 Nev. 982, 992, 12 P.3d 953, 959 (2000).

substantial assistance in the identification, arrest or conviction of any . . . person involved in trafficking in a controlled substance.” In other words, the decision to grant “a sentence reduction under NRS 453.3405(2) is a discretionary function of the district court.”²

In this case, it is undisputed that Alvarez did not actually provide substantial assistance; instead, he contends that his mere willingness to work with law enforcement officials should have been taken into consideration by the district court and entitled him to a sentence reduction. At the sentencing hearing, defense counsel conceded the following: “[Alvarez] has met with members of the Consolidated Narcotics Unit most recently, I think in the last two weeks, and he wasn’t able to provide them with any information they could use, unfortunately.” Alvarez similarly informed the district court: “I was not able to cooperate with these people, because when I gave my statement I said that I had never dealt with the other people before, and therefore I couldn’t really give them anymore.” The district court did not expressly state its findings with regard to substantial assistance prior to sentencing Alvarez and denying him a sentence reduction.

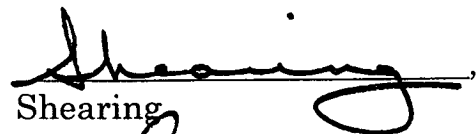
We conclude that the district court did not abuse its discretion in sentencing Alvarez. We also conclude that Parrish is distinguishable and does not apply to the instant case in the manner that Alvarez alleges. In Parrish, this court determined that the defendant provided law enforcement officials “with a considerable amount of information” that could have been deemed substantial assistance, and in the absence of

²Matos v. State, 110 Nev. 834, 838, 878 P.2d 288, 290 (1994); see also Parrish, 116 Nev. at 988-89, 12 P.3d at 957.

express findings by the district court, the record did not clearly support the district court's decision to not extend a sentence reduction.³ In this case, unlike the scenario in Parrish, the record is clear that Alvarez did not provide any assistance or have any pertinent information to offer, and that he only expressed a willingness to provide assistance. Moreover, Alvarez has not presented any relevant authority in support of his contention that a mere willingness to provide assistance is sufficient for a sentence reduction. "As we stated in Matos, this court may imply factual findings if the record clearly supports the lower court's ruling."⁴ Accordingly, we conclude that the district court did not err in failing to expressly state its findings prior to sentencing Alvarez.

Having considered Alvarez' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

 J.
Leavitt

 J.
Becker

³Parrish, 116 Nev. at 992, 12 P.3d at 959.

⁴Id. (citing Matos, 110 Nev. at 836, 878 P.2d at 289).

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk