

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIGOBERTO SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40511

FILED

JUN 05 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. B. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of level-three trafficking in a controlled substance. The district court sentenced appellant Rigoberto Sanchez to serve a prison term of 10 to 25 years.

The criminal charges arose when Sanchez and his codefendants were arrested in the course of a drug-buy that was set up by the Controlled Narcotics Unit (CNU). During the drug-buy, a codefendant contacted Sanchez, who subsequently arrived at the scene and handed a level-three trafficking quantity of methamphetamine to a confidential informant. Sanchez and his two codefendants were arrested and each pleaded guilty to a trafficking offense. At Sanchez's sentencing hearing, Sanchez requested a reduced sentence, arguing that he had provided law enforcement with substantial assistance by agreeing to testify against his codefendants. The prosecutor opposed Sanchez's request for a reduced sentence, stating that he believed Sanchez was the "key player" in the drug transaction and more culpable than his codefendants, given that he had supplied the drugs during the controlled-buy and that another level-three quantity of drugs was found in the search of Sanchez's home. Notably, the prosecutor represented to the district court that Sanchez

entered no agreements with the State involving substantial assistance. To the contrary, the prosecutor informed the district court that Sanchez declined an invitation from CNU to assist them with information about drug traffickers other than his codefendants because he believed providing such information would place his wife and children in jeopardy. Although the prosecutor conceded that Sanchez offered to testify against his two codefendants, the prosecutor explained that the State did not need Sanchez's testimony because Sanchez and his codefendants all waived their preliminary hearings and pleaded guilty on the same date. The district court considered the requirements of NRS 453.3405(2) and found that "Sanchez did not provide assistance to authorities other than a willingness to testify."

On appeal, Sanchez contends that the district court abused its discretion at sentencing in finding that Sanchez had not rendered substantial assistance to law enforcement authorities. Specifically, Sanchez contends that he rendered substantial assistance by offering to testify against his codefendants because that offer was the impetus for his codefendants' guilty pleas. We conclude that the district court did not abuse its discretion in finding that Sanchez failed to render substantial assistance.

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 substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals or of any other person involved in trafficking in a controlled substance." In construing NRS 453.3405(2), this court has recognized that the legislature has vested

the district court with great discretion in reducing a defendant's sentence for substantial assistance.¹ Generally, the district court may exercise that discretion in one of two ways:

First, the district court may find that a defendant has not rendered substantial assistance under the statute, and therefore is not eligible for a sentence reduction or suspension. Second, even if the district court finds that a defendant has rendered substantial assistance in accordance with NRS 453.3405(2), the district court is still free in its discretion to reduce or suspend the sentence.²

In the instant case, the district court's finding that Sanchez did not provide substantial assistance is supported by substantial evidence. In particular, the transcript of the sentencing proceeding reveals that Sanchez did not enter into an agreement with the State to testify against his codefendants³ and declined CNU's offer to provide them with information on other drug traffickers. Moreover, Sanchez failed to demonstrate that his offer to testify was the impetus for his codefendants' guilty pleas, or that a mere offer to testify against a codefendant constitutes substantial assistance as a matter of law.⁴ Because Sanchez

¹Parrish v. State, 116 Nev. 982, 988-89, 12 P.3d 953, 957 (2000).

²Id. at 991, 12 P.3d at 958.

³Because Sanchez did not enter into an agreement with the State to testify against his codefendants, we need not address the issue of whether such an agreement constitutes substantial assistance as a matter of law.

⁴We have reviewed the legal authority cited by Sanchez and conclude that it does not support his claim that a defendant's mere offer to testify against his codefendants constitutes substantial assistance as a matter of law. We also reject Sanchez's claims that he provided substantial assistance by "identifying" his codefendants and consenting to

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did not provide law enforcement with information leading to the arrest, identification, or conviction of an individual engaged in drug trafficking as required by NRS 453.3405(2), the district court did not abuse its discretion in refusing to reduce his sentence.

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

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

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

... continued

a search of his home. We note that the identities of Sanchez's codefendants were already known by law enforcement as Sanchez was arrested along with his two codefendants at the scene of the controlled drug-buy.