IN THE SUPREME COURT OF THE STATE OF NEVADA

MISAEL DELACRUZ-SOTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40517

FILED

FEB 27 2003

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

ORDER OF AFFIRMANCE

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 to serve a prison term of 10 to 25 years.

Appellant's sole contention is that the district court abused its discretion at sentencing in finding that appellant had not rendered substantial assistance to law enforcement authorities. Specifically, appellant contends that he rendered substantial assistance when he supplied law enforcement with the names, contact information, and quantities of controlled substances being distributed by five to ten individuals, and that law enforcement failed to follow up on that information in a timely manner. We conclude that the district court did not abuse its discretion in finding that appellant 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 . . . 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 record reveals that the district court properly considered the requirement of NRS 453.3405(2) and found that appellant did not render substantial assistance. In fact, the district court stated:

> Given the circumstances of the substantial assistance or the attempted substantial assistance, the Court in good conscience cannot find that [appellant] provided substantial assistance.
>
> He did not provide someone above him. He didn't – he delayed. Everything we heard in

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

[2]Id. at 991, 12 P.3d at 958.

> testimony today points to the Court that there is no substantial assistance in this case.

The district court's factual finding that appellant did not provide law enforcement with information leading to the arrest of drug traffickers is supported by the record. At the sentencing hearing, Consolidated Narcotics Unit Detective Richard Ayala testified that he wanted to work with appellant because he believed he was a major drug trafficker who was well-connected in light of the fact that appellant was arrested for possessing four pounds of methamphetamine. Ayala testified that appellant, after initially twice refusing to cooperate, reluctantly provided Ayala with the names and contact information of five to ten individuals. Ayala further testified, however, that he was not able to get in contact with any of the named individuals, explaining that either their phone numbers had been disconnected, the individual was no longer residing at the location, or the individual was not available. Ayala also testified that he did not believe that appellant ever provided him with the names of his suppliers, and that the information appellant provided neither led to the arrest of any individuals nor resulted in the seizure of any controlled substances. Although appellant contends that law enforcement failed to follow up on the information he provided, appellant failed to substantiate his contention at the sentencing proceeding. Because appellant 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 appellant's sentence.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Dennis A. Cameron
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk