

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADOLFO M. PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ADOLFO MARQUEZ PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ADOLFO MARQUEZ PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40996

FILED

FEB 11 2004

No. 40997

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

No. 40998

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction, pursuant to guilty pleas, of three counts of level-three trafficking in a controlled substance. The district court sentenced appellant Adolfo M. Perez to serve three consecutive prison terms of 10-25 years and ordered him to pay a fine of \$50,000.00.

Perez contends 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. Additionally, Perez argues that he willingly offered detailed information about other drug traffickers, but that he was denied the opportunity to provide substantial assistance because law enforcement officials refused to accept the information and work with him. Perez claims that law enforcement's "unlawful" refusal to use his information essentially

usurped the district court's discretion by manipulating the sentencing process. We disagree with Perez' contention.¹

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 other words, the decision to grant "a sentence reduction under NRS 453.3405(2) is a discretionary function of the district court."² In Parrish v. State, this court stated that the sentencing court is required "to expressly state its finding concerning whether or not substantial assistance has been provided."³ Nevertheless, in the absence of an express finding by the district court, "this court may imply factual findings if the record clearly supports the lower court's ruling."⁴

In this case, we conclude that the district court did not abuse its discretion in sentencing Perez. At the sentencing hearing, the district court heard arguments from counsel, the testimony of a Reno police officer assigned to the Regional Gang Unit, and from Perez. The police officer

¹Perez also contends that the district court erred in denying his pre-guilty plea "Motion to Dismiss Trafficking Enhancements," filed after his first arrest, based on a theory of "sentencing entrapment." Perez has not preserved this issue for review on appeal, and it is therefore waived. Accordingly, we will not address the issue. See NRS 174.035(3); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975); see also Tollett v. Henderson, 411 U.S. 258, 267 (1973).

²Matos v. State, 110 Nev. 834, 838, 878 P.2d 288, 290 (1994); see also Parrish v. State, 116 Nev. 982, 988-89, 12 P.3d 953, 957 (2000).

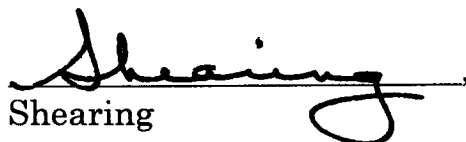
³116 Nev. at 992, 12 P.3d at 959.

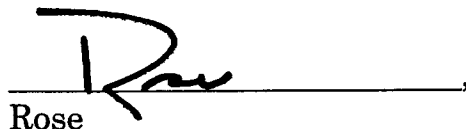
⁴Id. (citing Matos, 110 Nev. at 836, 878 P.2d at 289).

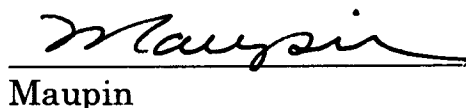
testified that, in his experience and opinion, Perez never provided any information that amounted to substantial assistance. The district court did not make express findings prior to sentencing Perez. Our review of the record, however, reveals that Perez provided only minimal assistance to law enforcement officials and therefore was not entitled to a sentence reduction. Moreover, Perez has not presented any relevant authority in support of his contention that a mere willingness to provide assistance is sufficient for a sentence reduction. After initial attempts to work with Perez, the Consolidated Narcotics Unit (CNU) determined that he was not reliable or trustworthy. In fact, after posting bail subsequent to each of his first two arrests, Perez continued trafficking in controlled substances until his third arrest. CNU, therefore, declined to accept any further information from Perez. Finally, we note that although Perez did not receive the sought-after sentence reduction for providing substantial assistance, he did receive a considerable benefit through the State's dismissal of several additional felony charges in exchange for his guilty plea.

Accordingly, having considered Perez' contention and concluded that it is without merit, we

ORDER the judgments of conviction AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Steven R. Kosach, District Judge
Law Office of David R. Houston
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk