

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN HODGES FINNEGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41471

FILED

OCT 13 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 voluntary manslaughter (count I) and second-degree kidnapping (count II). The district court sentenced appellant Steven Hodges Finnegan to serve a prison term of 3 to 9 years for count I and a consecutive prison term of 3 to 9 years for count II.

Finnegan's sole contention is that the district court erred in denying his presentence motion to withdraw his guilty plea because his plea was based upon the advice of counsel who had an actual conflict of interest. We conclude that Finnegan's contention lacks merit.

To show a Sixth Amendment violation of the right to counsel an appellant must demonstrate both an actual conflict and an adverse effect from his lawyer's performance.¹

¹Cuyler v. Sullivan, 446 U.S. 335, 348 (1980); see also Clark v. State, 108 Nev. 324, 831 P.2d 1374 (1992).

We conclude that Finnegan has not demonstrated his plea was the product of representation by an attorney who had an actual conflict of interest that adversely affected his attorney's performance. At the time Finnegan decided to accept the State's plea offer, he was represented by three independent attorneys who each recommended that he accept the plea offer. None of those attorneys had a conflict of interest, and all were present during the plea negotiations at issue. Further, Finnegan received a substantial benefit from the plea agreement negotiated, in that, he pleaded guilty to reduced charges,² and his guilty plea was conditioned on the district court imposing a sentence of two consecutive 3 to 9 year prison terms. Finally, Finnegan's claim that he pleaded guilty based upon the advice of his former counsel, who withdrew due to an actual conflict, is belied by the record. At the plea canvass, Finnegan informed the court that he was pleading guilty of his own free will, and that he had discussed the case, as well as the plea agreement with his attorneys. Accordingly, because Finnegan failed to show that his guilty plea was involuntary, the district court did not abuse its discretion in denying Finnegan's presentence motion to withdraw his guilty plea.³

²Finnegan was originally charged with one count each of open murder, first-degree kidnapping, sexual assault, and burglary.

³See NRS 176.165; Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Kathy A. Hardcastle, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk