

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG ANTONIO MLACNIK A/K/A
MIKE TATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42124

FILED

FEB 18 2004

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 jury verdict, of one count of grand larceny. The district court adjudicated appellant Greg Antonio Mlacnik as a habitual criminal and sentenced him to serve a prison term of 10-25 years.

Mlacnik's sole contention is that his conviction should be reversed because the district court failed to conduct a sufficient canvass to determine whether he knowingly and intelligently waived his right to testify. Outside the presence of the jury, the following exchange took place:

COURT: I want to make sure the record is clear. Mr. Mlacnik, your attorney on several times this morning said you did not want to testify. You understand that is your right?

DEFENDANT: Yeah.

COURT: And have you decided that you do not want to testify in this case?

DEFENDANT: He says I'm not supposed to, yes.

COURT: Okay. Do you understand that he is making that recommendation to you, you could testify if you wished to testify, but if you don't want to, that's your constitutional right and no

one can ever say anything about the fact that you failed to testify? Do you understand that?

DEFENDANT: No one can what?

COURT: No one can ever say about the fact that you failed to testify.

DEFENDANT: Oh, okay.

...

COURT: I just wanted to make sure you understood what was going on.

DEFENDANT: I don't want to tell you anything because remember, you told me don't tell you anything about the case. I was going to say something.

COURT: Especially since you are reserving your right against self-incrimination, you should not discuss your case on the record.

Mlacnik claims that the colloquy confused him, and demonstrates that he "did not understand that he was not required to let his attorney decide this question for him [whether to testify], or that he could . . . override his attorney's decision." We disagree with Mlacnik's contention.

This court has stated that while "it is good practice" for a trial court to advise a defendant about his constitutional right to testify, we have also held that such an advisement is not mandatory for purposes of a valid conviction.¹ In the instant case, the record reveals that Mlacnik was, in fact, informed about his right to testify. Our decision in Phillips v. State does not require anything more. Moreover, at no point in the proceedings below or on appeal does Mlacnik state that he actually wanted to testify. We also note that Mlacnik, similarly to the defendant in

¹Phillips v. State, 105 Nev. 631, 633, 782 P.2d 381, 382 (1989).

Phillips: (1) was not coerced into waiving his right to testify; (2) had multiple prior felony convictions, which suggests that he may have decided not to testify in order to avoid being impeached in front of the jury with his criminal history; and (3) had an extensive criminal history, and therefore it “strains credulity” to believe that he was unaware of his right to testify.² Accordingly, we conclude that the district court did not err by failing to properly advise Mlacnik.

Having considered Mlacnik’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker _____, J.
Becker

Agosti _____, J.
Agosti

Gibbons _____, J.
Gibbons

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

²See id.