

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD MERRILL KINNEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52262

FILED

JAN 26 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY SV
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of burglary. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Donald Merrill Kinney to serve a prison term of 19 to 48 months.

Kinney's sole contention is that the district court abused its discretion at sentencing by denying his motion for a continuance. Kinney claims that the State would not have been prejudiced by a continuance and there was "no other pressing reason" given for the denial. Kinney notes that defense counsel informed the district court "that she was not prepared to proceed because her client had not yet been interviewed by the Division of Parole and Probation" and "she had not had a chance to discuss the Division's recommendation with her client." Kinney cites to Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978), in support of his


argument that “the district court’s ‘myopic insistence’ on moving forward with the sentencing hearing made counsel’s involvement at sentencing ‘of little value.’”

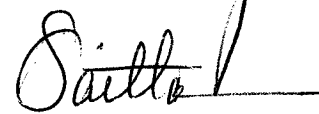
We review a district court’s decision regarding a motion for continuance for an abuse of discretion. Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000). To determine whether an abuse of discretion occurred, we weigh the prejudice to the defendant if the continuance is denied against the prejudice to the district court and the administration of justice if the continuance is granted. Id.

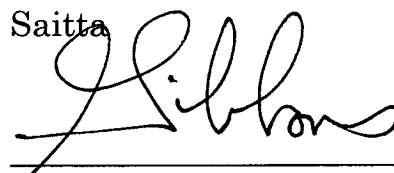
The record before us reveals that any prejudice that Kinney may have sustained from the district court’s denial of his motion for a continuance was minimal. On May 7, 2008, the district court accepted Kinney’s guilty plea. On July 9, 2008, Kinney failed to appear for sentencing. On July 23, 2008, at the time set for sentencing, defense counsel asked for a continuance, explaining that Kinney “was never given a date to meet with the Division, and he simply played phone tag with their representatives.” The State announced that it was prepared to go forward. The district court denied defense counsel’s motion, but trailed the proceeding so that counsel could discuss the presentence investigation report with Kinney. Thereafter, the State recommended the sentence that was memorialized in the written plea agreement, Kinney provided his statement of allocution, and the district court imposed the sentence recommended by the State. Under these circumstances, Kinney has not

demonstrated that he was prejudiced or that the district court abused its discretion by denying his motion for a continuance. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Robert H. Perry, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk