

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL AVILA-GARCIA A/K/A
SAMUEL DIAS GARCIA A/K/A
SAMUEL GARCIA-AVILA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57970

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted possession of false identification. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.


Appellant Samuel Avila-Garcia claims that the district court failed to perform its judicial duties without bias or prejudice and thereby violated his right to due process. Specifically, Avila-Garcia contends that he was convicted of a felony instead of a gross-misdemeanor based on his immigration status. We review the district court's sentencing determination for abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993).

The district court did not base its sentencing determination upon Avila-Garcia's immigration status when it disagreed with defense counsel's argument that Avila-Garcia was attempting to obtain a legal residency status. See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998), distinguished by Ruvalcaba v. State, 122 Nev. 961, 965, 143 P.3d 468, 471 (2006) (district court does not violate Martinez by considering criminal defendant's status as undocumented immigrant for

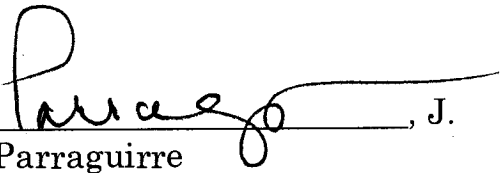
limited purpose of deciding whether to grant probation). It merely declined to accept Avila-Garcia's argument that his efforts to obtain a legal residency status supported a lesser sentencing category. "[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). We conclude that Avila-Garcia has not presented such evidence.

Having considered Avila-Garcia's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk