IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRADLEY ELLINGSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72120

ORDER OF AFFIRMANCE

Bradley Ellingson appeals from a judgment of conviction entered pursuant to a plea of guilty but mentally ill of escape.[1] Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

First, Ellingson claims the district court's *Faretta*[2] canvass was inadequate because he was not informed that his access to legal research would be limited by prison rules and would be different than the access other prison inmates received.

"The purpose of a *Faretta* canvass is to apprise the defendant fully of the risks of self-representation and of the nature of the charged crime so that the defendant's decision is made with a clear comprehension of the attendant risks." *Hooks v. State*, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008) (internal quotation marks omitted). The Nevada Supreme Court "has rejected the necessity of a mechanical performance of a *Faretta* canvass," *Hymon v. State*, 121 Nev. 200, 212, 111 P.3d 1092, 1101 (2005) (internal quotation marks omitted), and "the district court certainly does

[1]Ellingson reserved his claims for appeal pursuant to NRS 174.035(3).

[2]*Faretta v. California*, 422 U.S. 806 (1975).

not have an obligation to give the defendant specific warnings or advisements about every rule or procedure which may be applicable," *Harris v. State*, 113 Nev. 799, 803, 942 P.2d 151, 154-55 (1997).

The district court conducted a thorough canvass during which it informed Ellingson of the nature of the charge, the potential penalties, and the dangers of self-representation. The district court also addressed Ellingson's access to the prison law library and informed him that he was not entitled to special law library privileges. The record demonstrates Ellingson's decision to waive his right to counsel was made knowingly, intelligently, and voluntarily, and we conclude the district court did not abuse its discretion by allowing Ellingson to waive his right to counsel. *See Hooks*, 124 Nev. at 55, 176 P.3d at 1085.

Second, Ellingson claims the State's discovery violations violated his right to due process. However, he argues only what he hoped to prove at trial and he does not identify any discovery that was improperly withheld or explain how the State violated the discovery rules. Accordingly, he has failed to state a claim upon which relief could be granted.

Third, Ellingson claims the State's *Brady*[3] violation prevented him from gathering information to prove his necessity defense. He asserts he sought information about Ryan Harrington, an inmate who had previously escaped from the Ely Conservation Camp, and Harrington's defense counsel, who had taken the case to trial. And he argues this information could have proved the futility element of his necessity defense[4]

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[3]*Brady v. Maryland*, 373 U.S. 83 (1963).

[4]Ellingson relies on *Jorgensen v. State*, 100 Nev. 541, 543, 688 P.2d 308, 309 (1984), for the definitions of the elements of the necessity defense to a charge of escape from custody.

and could have impeached the testimony of the corrections officers and their supervisor had the case gone to trial.

To prove a *Brady* violation, an accused must demonstrate "the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material." *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000). Evidence that was not requested, or requested generally, "is material [only] if there is a reasonable probability that the result would have been different if the evidence had been disclosed." *Id.* at 66, 993 P.2d at 36.

Even assuming the State withheld evidence regarding Harrington's escape from the Ely Conservation Camp,[5] Ellingson has not demonstrated this evidence would prove "there exists a history of futile complaints which make any result from such complaints illusory," *Jorgensen*, 100 Nev. at 543, 688 P.2d at 309, nor has he shown this evidence would have impeached the testimony of the corrections officers and supervisors testifying at his trial. As Ellingson has failed to prove this evidence was favorable to the defense and demonstrate a reasonable probability that it would have rendered a favorable trial result, we conclude he has failed to prove the State committed a *Brady* violation.

Fourth, Ellingson claims the State's seizure of a letter he wrote to his mother violated his due process rights by preventing him from communicating with a witness to establish an insanity defense. The record indicates that Ellingson failed to properly label his letter to his mother as

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[5]The State filed a supplemental appendix in this appeal which contained a partial transcript of the jury trial in Harrington's case. The transcript did not include the defense's case in chief and the jury's verdict.

"legal mail," and, consequently, it was screened as regular mail. Thereafter, Ellingson filed a motion seeking to prevent further monitoring of his mail. The district court granted the motion in part and instructed Ellingson on the procedures he must follow to send and receive legal mail. As the record does not demonstrate Ellingson was prohibited from sending and receiving legal mail, we conclude he has failed to state a claim upon which relief could be granted.

Fifth, Ellingson claims the State violated the Interstate Agreement on Detainers (IAD) by failing to provide notice that he would face burglary and grand-larceny-of-a-motor-vehicle charges and a count of habitual criminality. Nevada's Agreement on Detainers is set forth in NRS 178.620. Article V(d) provides in relevant part,

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers *or for prosecution on any other charge or charges arising out of the same transaction.*

(Emphasis added). Because the record demonstrates Ellingson's burglary and grand-larceny-of-a-motor-vehicle charges arose out the same transaction as his escape,[6] *see People v. Garcia*, 17 P.3d 820, 825 (Colo. App. 2000) (construing an identical provision in Colorado's Agreement on Detainers), and a "habitual criminal adjudication is not an offense, it is a status determination," *LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919,

[6]Both charges were dismissed during the preliminary hearing.

928 (2014), we conclude Ellingson failed to demonstrate that the State violated the IAD.[7]

Having concluded Ellingson is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.[8]

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Steve L. Dobrescu, District Judge
Sears Law Firm, Ltd.
Attorney General/Carson City
White Pine County District Attorney
Attorney General/Ely
White Pine County Clerk

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[7]To the extent Ellingson claims he would not have waived his right to counsel had he known the State was seeking habitual criminal treatment, his claim is belied by the record. The State's information and notice of habitual criminality were filed before the district court's *Faretta* canvass and the punishments available under the habitual criminal statutes were fully discussed during the *Faretta* canvass.

[8]Although the Nevada Supreme Court elected to file the appendix submitted, it does not comply with the Nevada Rules of Appellate Procedure. Specifically, the documents in the appendices were not arranged in chronological order. *See* NRAP 30(c)(1). Counsel for Ellingson is cautioned that failure to comply with the requirements for appendices in the future may result in the appendices being returned, unfiled, to be correctly prepared. *See* NRAP 32(e).