

SUPREME COURT OF NEVADA

Gallego v. State, 117 Nev. 348

23 P.3d 227 (2001) · No. No. 35291 · Decided May 17, 2001

SUMMARY

The Supreme Court of Nevada reviewed Gerald Armond Gallego’s second capital sentencing proceeding following a federal order requiring resentencing. The court held that the district court properly denied Gallego’s requests for self-representation and substitute counsel based on his obstructive conduct and lack of adequate cause for substitution. The court also rejected challenges to the jury instructions, prosecutorial argument, and incomplete mitigation section of the special verdict form, and affirmed the death sentences.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Shearing, J.; Agosti, J.; Rose, J.; Leavitt, J.; Becker, J.
JURISDICTION	Nevada
DECIDED	May 17, 2001
DOCKET	No. 35291
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gallego appealed from a judgment imposing two death sentences after a second penalty hearing ordered by a federal court.
STANDARD OF REVIEW	The court reviewed denial of self-representation and substitute-counsel motions under the standards described in the opinion, including abuse of discretion for substitution of counsel and deference to the district court's assessment of disruptive behavior. Unpreserved instructional and prosecutorial-error claims were reviewed for plain error affecting substantial rights. The court conducted mandatory statutory review of the death sentence.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Nevada decided en banc.
PARTIES	Gerald Armond Gallego v. The State of Nevada

TOPICS

right to counsel

jury instructions

sentencing

criminal procedure

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

capital sentencing

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the district court improperly denied Gallego's request to represent himself.
2. Whether the district court improperly denied Gallego's motion for substitute counsel.
3. Whether unobjected-to jury instructions and prosecutorial closing remarks constituted plain error.
4. Whether the jury's failure to mark individual mitigating circumstances on the special verdict form invalidated the death sentences.
5. Whether Gallego's exclusion from in camera proceedings violated his right to be present.
6. Whether Gallego knowingly and voluntarily waived his right to testify.
7. Whether Nevada's capital sentencing procedures and the challenged penalty-phase evidence, funding ruling, victim-related statement, and psychological-evaluation procedure required reversal.
8. Whether the death sentences were excessive or imposed under passion, prejudice, or an arbitrary factor.

HOLDINGS

1. The request was timely because it was made nearly a year before the new penalty-phase jury was empaneled and did not require a continuance; acceptance of appointed counsel at the original trial did not waive the right to self-representation at the later penalty hearing.
2. A request for self-representation is not necessarily equivocal merely because the defendant alternatively seeks substitute counsel. The district court erred by treating the requests as inherently inconsistent without first separately resolving the substitution motion and determining whether Gallego would proceed pro se if substitution were denied.
3. The district court acted within its discretion in denying self-representation based on Gallego's repeated and intentional obstruction of proceedings and demonstrated unwillingness or inability to follow courtroom procedures.
4. The district court did not abuse its discretion in denying substitute counsel because Gallego failed to establish good cause, an actual conflict of interest, or a breakdown in communication preventing an adequate defense.
5. The challenged instructions correctly conveyed the need to consider mitigation, and although the prosecutor improperly suggested that the defense had a burden to rebut aggravating circumstances, the brief remark did not affect Gallego's substantial rights in light of the overwhelming evidence of aggravation.
6. The jury was not required to identify each mitigating circumstance it found, and its failure to complete the individual mitigation portions of the form did not invalidate the sentences or prevent mandatory appellate review.

7. Gallego knowingly and intentionally waived his right to testify because the court correctly explained that penalty-phase testimony could be limited to matters relevant to mitigation and remorse rather than guilt.
8. The evidence supported the aggravating circumstances, the sentences were not imposed under passion, prejudice, or an arbitrary factor, and the death sentences were not excessive.

KEY QUOTATIONS

“Although an unequivocal request for self-representation can be conditional, “it must speak to self-representation and not simply to a dissatisfaction with current counsel,” and “a court can insist that the defendant explicitly cho[ose] to proceed pro se once informed that a substitution of counsel will not be permitted.”” (236)

“The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.” (237)

“Attorney-client conflicts justify the grant of a substitution motion only when counsel and defendant are so at odds as to prevent presentation of an adequate defense.” (238)

FACTUAL BACKGROUND

Two teenage girls disappeared from a shopping mall in California in April 1980 and were later found buried in Nevada. Evidence established that Gallego kidnapped, sexually molested, and murdered the victims, and that he and an accomplice had committed similar murders in California. At the second penalty hearing, the State presented evidence of additional murders and aggravating circumstances, while the defense presented evidence of severe childhood abuse, mental illness, and organic brain damage. The jury found three aggravating circumstances and concluded that mitigation did not outweigh aggravation.

PROCEDURAL HISTORY

Gallego was convicted of two counts of first-degree murder and two counts of first-degree kidnapping and originally received death sentences for the murders. The Ninth Circuit ordered resentencing because a jury instruction concerning executive clemency was misleading. After a new penalty hearing, the jury again imposed death sentences, and the district court entered judgment. The Nevada Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gallego v. State, 101 Nev. 782, 711 P.2d 856 (1985)
- Gallego v. McDaniel, 124 F.3d 1065 (9th Cir. 1997)
- Faretta v. California, 422 U.S. 806 (1975)
- Godinez v. Moran, 509 U.S. 389 (1993)

- McKaskle v. Wiggins, 465 U.S. 168 (1984)
- Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997)
- Adams v. Carroll, 875 F.2d 1441 (9th Cir. 1989)
- Thomas v. State, 94 Nev. 605, 584 P.2d 674 (1978)
- Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997)
- United States v. Olano, 507 U.S. 725 (1993)
- Witter v. State, 112 Nev. 908, 921 P.2d 886 (1996)
- Rogers v. State, 101 Nev. 457, 705 P.2d 664 (1985)
- Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996)
- Johnson v. Zerbst, 304 U.S. 458 (1938)
- Echavarria v. State, 108 Nev. 734, 839 P.2d 589 (1992)
- Hollaway v. State, 116 Nev. 1009, 6 P.3d 987 (2000)
- Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998)
- Leonard v. State, 114 Nev. 1196, 969 P.2d 288 (1998)
- Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996)