

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC SHAWN MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44208

FILED

MAY 18 2005

ORDER OF AFFIRMANCE

ANNE M. BLOOD
CLERK OF SUPREME COURT
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with a deadly weapon. Second Judicial District Court, Washoe County; James W. Hardesty, Judge. The district court sentenced appellant Eric Shawn Miller to serve a prison term of 36-120 months.

First, Miller contends that the district court abused its discretion by not allowing the victim to speak at the sentencing hearing. Miller states that the victim, who was present in the courtroom, "would have spoken in [his] favor." We conclude that Miller's contention is without merit.

At the sentencing hearing, defense counsel made the following statement:

Your Honor, I would note that the victim . . . is currently in the courtroom. She doesn't wish to speak to the Court I believe unless she feels that there is a need to.

But she is very supportive of Mr. Miller; they came together today. She's very supportive of him and would be speaking on his behalf this morning.

Emphasis added. Based on the above statement, not only was the district court informed that the victim did not wish to speak, but the essence of

what she would have stated was, in fact, conveyed to the court. Therefore, we conclude that the district court did not abuse its discretion by failing to offer the victim an opportunity to speak at the sentencing hearing.

Second, Miller contends that the district court abused its discretion by allowing a representative from the Division of Parole and Probation to address the court at the sentencing hearing. Pursuant to the plea negotiations, the State agreed to recommend a suspended sentence of 48-120 months, with a term of probation not to exceed 5 years. The Division, on the other hand, recommended a term of incarceration. After hearing the arguments of defense counsel, and confirming the State's agreement with the recommendation, the district court asked the representative from the Division if she had anything further to add:

Yes, Your Honor. The Division believes that the victim in this matter is in grave danger going forward, given the history with this defendant, kind of a fatal attraction kind of relationship, and we believe that incarceration is appropriate.

We do recognize his mental health issues and the fact that he's taking steps to resolve those issues; however, we see this as not good for the victim in this case, despite her wishes and despite her articulated relationship with the defendant. The defendant is the sole beneficiary for her will and all of her property at this point.

And the writer [of the presentence investigation report] spoke to me at length last night and is very disturbed about this matter and is very concerned for the victim's well-being and asked that the defendant be incarcerated.

The district court then sentenced Miller to a prison term of 36-120 months. Miller argues that no statute "provides that the Division's representative can address the court above and beyond the written

report. . . . To allow the Division to come in . . . and make factual arguments and representations is akin to allowing the representative to practice law without a license."

Initially, we note that Miller failed to object to the Division's statements at the sentencing hearing. Failure to raise an objection with the district court generally precludes appellate consideration of an issue.¹ This court may nevertheless address alleged error if it was plain and affected the appellant's substantial rights.² We conclude that no plain error occurred in this case, and that Miller's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."³ Notably, Miller has not challenged the veracity of the Division's statements at sentencing or alleged that the statements were based on impalpable or highly suspect evidence. NRS 176.135(1) states in part that "the Division shall make a presentence investigation and report to the court on each defendant who pleads guilty," and no statute prevents the Division from addressing the court at sentencing when asked to do so

¹See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

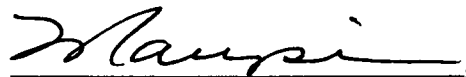
²See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

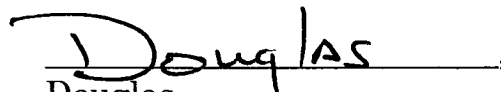
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

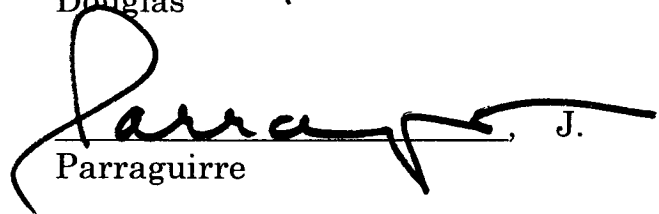
by the district court judge. In this case, the Division was satisfying its statutory obligation by reporting to the court after its presentence investigation. Accordingly, we conclude that the district court did not abuse its discretion by allowing the Division's representative to address the court at the sentencing hearing.

Therefore, having considered Miller's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Second Judicial District Court Dept. 9, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk