

IN THE SUPREME COURT OF THE STATE OF NEVADA

STACY MICHAEL DOZIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44703

**FILED**

AUG 18 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony child abuse. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Stacy Michael Dozier to serve a prison term of 48 to 120 months.

Dozier pleaded guilty to felony child abuse for squeezing his 11-day-old daughter's knee, causing a small bruise. Dozier had a prior felony child abuse conviction for shaking and hitting a three-month-old infant boy, causing permanent brain damage. At the sentencing hearing, the State presented testimony that, prior to the instant offense, Dozier and his wife tightly swaddled their infant daughter all the way up to her nose, essentially binding her pacifier in her mouth so that she would not cry. The State also presented testimony that, after the instant offense, Dozier's daughter sustained additional physical injuries, including bruising to her face and back, as well as a broken arm.

At the sentencing hearing, defense counsel requested a sentence of probation, noting that Dozier was not a high risk to reoffend, had only caused a small bruise on his daughter's knee, and was not charged with causing the additional injuries to his daughter. Additionally,

defense counsel argued that, although Dozier's prior child abuse conviction involved substantial injury to the infant-victim, Dozier had maintained his innocence, pleading nolo contendere, and had already been punished for that criminal offense. In response, the prosecutor requested a prison sentence of 4 to 10 years, noting that the police reports from the prior child abuse case indicated that Dozier admitted to hitting the victim and arguing that Dozier was a danger to his daughter. The prosecutor requested that the district court send Dozier to prison to prevent social services from implementing its reunification plan to place the infant-victim back in the home with Dozier. Just prior to imposing sentence, the following colloquy occurred between the district court and Dozier:

Dozier: I know by putting that little bruise on [my daughter], I know it wasn't right, but I was just scared. And she means the world to me.

The Court: Why were you scared? Why did you have to bruise her when you were scared?

. . . .

So you didn't - - your report said that you squeezed the knee to stop her from crying, not out of fear.

Dozier: It was more out of fear. Because I didn't know what was going on. I have never seen anything like that in my life. I have never been around anything like this in my life.

The Court: Mr. Dozier, I am very uncomfortable with you changing the reason for the offense. It does not appear to me that when you tell me something different I'm not sure which one it was [sic], but I do know that you admitted in your plea canvass that you . . . intentionally squeezed the knee that caused the injuries to the child.

You have a prior conviction. You have spent a significant amount of time in prison. You should have known better.

Citing to Witte v. U.S.,<sup>1</sup> Dozier contends that the district court violated his constitutional right to be free from Double Jeopardy by basing the sentence imposed in this case on his prior child abuse conviction. While acknowledging that the sentencing court may consider a defendant's criminal history, Dozier argues that that he was punished twice for the same offense because the district court imposed sentence based on its "horror at his prior offense," as well as the prosecutor's improper argument that it should send Dozier to prison because he was dangerous and to prevent "social services [from putting] him back in the home with the baby." We conclude that Dozier's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> There are few limitations on a district court's right to consider evidence in determining the appropriate sentence.<sup>3</sup> While the district has broad discretion to consider uncharged crimes to gain "a fuller assessment of the defendant's 'life, health, habits, conduct, and mental and moral propensities,'" the district court may not

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<sup>1</sup>515 U.S. 389, 395-96 (1995) (recognizing that a defendant may not be punished twice for the same offense).

<sup>2</sup>See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

<sup>3</sup>Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

punish a defendant based on uncharged criminal conduct.<sup>4</sup> Considering the broad discretion afforded to the district court in sentencing, we 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."<sup>5</sup>

In this case, there is no indication in the record that the district court imposed an excessive sentence based on Dozier's prior crime of child abuse or the prosecutor's comments about Dozier's future dangerousness. Although the sentence was harsher than the sentence recommended by the Division of Parole and Probation, the sentence imposed was within the parameters provided by the relevant statute.<sup>6</sup> Moreover, in considering the district court's comments in context, it is clear that the district court imposed sentence because Dozier gave inconsistent explanations for why he committed the crime and had engaged in recidivist behavior of abusing infant children. Accordingly, we conclude that the district court did not violate Dozier's right to be free from Double Jeopardy or impose an excessive sentence based on uncharged criminal conduct.

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<sup>4</sup>Id. at 494, 915 P.2d at 287 (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).


<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>6</sup>See NRS 200.508(1)(b)(2) (providing for a prison term of 2 to 15 years). The Division recommended a prison sentence of 2 to 7 years.

Having considered Dozier's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Connie J. Steinheimer, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk