

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID WILLIAM HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45944

FILED

MAR 16 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of uttering forged instruments. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. Appellant David Hill was sentenced to a prison term of 12-36 months on each count, consecutive to each other and consecutive to Hill's Lyon county case.

Hill first alleges ineffective assistance of counsel. We decline to consider Hill's ineffective assistance arguments on direct appeal.¹ Such claims should be raised in a post-conviction habeas petition, not on direct appeal.² Further, it is improper for appellate counsel, who was also Hill's trial counsel, to allege an ineffective assistance claim against himself, notwithstanding the impropriety of doing so on direct appeal.

Second, Hill asserts he should have been convicted of only one count because the offenses were part of a common scheme or plan. By pleading guilty, Hill waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea. Hill

¹Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995).

²Pellegrini v. State, 117 Nev. 860, 882, 34 P.3d 519, 534 (2001).

pleaded guilty and failed to preserve the issue for appeal.³ Therefore we decline to consider the issue.

Third, Hill similarly claims it was improper to charge him with two counts because they can only be joined if they are based on the same transaction or occurrence or are part of a common scheme or plan. Again, Hill failed to preserve this issue for appeal, and therefore we decline to consider the issue.

Fourth, Hill contends the district court erred in admitting evidence of his prior bad acts by considering his criminal history at sentencing. This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ This court 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."⁵ Moreover, Hill's sentence is within the statutory limits.

In the instant case, Hill does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁶ Upon review of the record, it is evident the district court did not punish Hill for

³See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975); NRS 174.035(3).

⁴See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

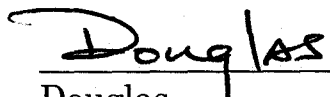
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁶See NRS 205.110; 205.090; 193.130(d).

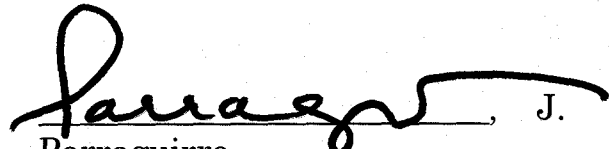
uncharged acts. Instead, the district court properly used the information in Hill's pre-sentence report regarding his criminal history as a factor in imposing consecutive sentences. Moreover, it is within the district court's discretion to impose consecutive sentences.⁷

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Robert E. Estes, District Judge
Churchill County Public Defender
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk

⁷See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).