

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK RICHARD LOVELIEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47128

**FILED**

SEP 27 2006

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 one count of assault with a deadly weapon. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Mark Richard Lovelien to serve a prison term of 12 to 60 months.

Lovelien contends that the district court abused its discretion at sentencing. Citing to Denson v. State,<sup>1</sup> Lovelien first argues that the district court imposed sentence based on his prior criminal offenses, as well as the prosecutor's allegedly impermissible argument that Lovelien had not been adequately punished for his past criminal behavior. We conclude that Lovelien's contention lacks merit.

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<sup>1</sup>112 Nev. 489, 915 P.2d 284 (1996) (holding that sentencing court erred by imposing sentence to punish the defendant for prior uncharged criminal conduct).

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>2</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 punish a defendant based on uncharged criminal conduct.<sup>3</sup>

At the sentencing hearing, the prosecutor argued:

He hasn't been to prison before, and I don't know how he's avoided it with this criminal history, but the time has come, Your Honor. He's hurt too many people. He's committed too many acts of violence, and here he is again today before you, being sentenced on an act of violence while he's still pending another one.

After hearing argument from counsel and Lovelien's statement of allocution, the district court imposed sentence explaining, "my first obligation is the protection of the community, and it looks like we've had some problems here going back a long ways." We disagree with Lovelien that the district court imposed an excessive sentence based on prior crimes. In considering the statement in context, the sentencing court, like the prosecutor, merely referred to Lovelien's past crimes in noting his propensity for violence and concluding that he was a continuing threat to the community.

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

<sup>3</sup>Denson, 112 Nev. at 494, 915 P.2d at 287 (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).

In a related argument, Lovelien contends that he is entitled to a new sentencing hearing because a representative of the Division of Parole and Probation impermissibly advocated for a particular sentence at the hearing. Lovelien contends that that such argument is akin to allowing the representative of the Division to practice law without a license and is not authorized by Nevada statute. We disagree.

There are few limitations on a district court's right to consider evidence in determining the appropriate sentence.<sup>4</sup> In fact, this court has recognized that a district court may consider a wide variety of information to ensure that that punishment fits the crime and the individual defendant.<sup>5</sup> Here, we conclude that the district court acted within its discretion in hearing argument from the representative of the Division of Parole and Probation because she possessed information relevant to determining Lovelien's sentence.<sup>6</sup> Accordingly, the district court did not err or abuse its discretion at sentencing.

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<sup>4</sup>See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

<sup>5</sup>See id.

<sup>6</sup>We note that the Division gathers and evaluates information about the defendant to assist the court in determining the sentence. NRS 176.145(1) requires the Division to include specific information in the report, including the defendant's criminal record, the circumstances of the crime, and the characteristics of the defendant. NRS 176.145(2) also authorizes the Division to "include in the report any additional information that it believes may be helpful [to the district court] in imposing sentence."

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Hon. Robert H. Perry, District Judge  
Washoe County Public Defender  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk