

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ANTHONY PALMER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47545

**FILED**

**NOV 13 2006**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction entered pursuant to a guilty plea. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

In 1999, appellant Scott Anthony Palmer was convicted, pursuant to a guilty plea, of one count of attempted sexual assault. He was sentenced to serve a prison term of 24 to 60 months. We affirmed the judgment of conviction on direct appeal,<sup>1</sup> and we reversed and remanded the case on appeal from an order of the district court denying Palmer's petition for a writ of habeas corpus.<sup>2</sup>

In 2005, Palmer entered into a plea agreement in which he again agreed to plead guilty to one count of attempted sexual assault. In the written agreement, Palmer acknowledged that as a consequence of his plea, the district court could sentence him to a prison term of 2 to 20 years, he would receive a special sentence of lifetime supervision, and that

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<sup>1</sup>Palmer v. State, Docket No. 34049 (Order Dismissing Appeal, June 13, 2000).

<sup>2</sup>Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

the district court was not bound by the agreement in determining his sentence. In exchange for his plea, the State agreed to affirmatively recommend probation, but reserved the right to argue for an appropriate sentence if Palmer failed to appear at any scheduled proceeding.

The district court accepted Palmer's guilty plea, set a date for sentencing, and released Palmer on his own recognizance. When Palmer failed to appear for sentencing, the district court entered a bench warrant for his arrest. Palmer was later extradited from the state of Maine.

At sentencing, Palmer conceded that he failed to appear on previous occasions. The State observed that this was the second time that Palmer failed to appear at a scheduled proceeding, fought extradition, and had to be extradited from another state at great public expense. The State noted that Palmer had already served 1,253 days, and it asked the district court to sentence Palmer to a prison term of 48 to 120 months so that he would serve an additional six or seven months. The State opined that this was an appropriate punishment from which Palmer would learn that he cannot ignore court orders. The district court sentenced Palmer to serve a prison term of 36 to 120 months and ordered him to pay restitution, extradition, and legal representation costs. This appeal follows.

Palmer notes that his second sentence is more severe than his original sentence, and he claims that it is the product of judicial vindictiveness arising from his appellate success. In Mitchell v. State, we observed that

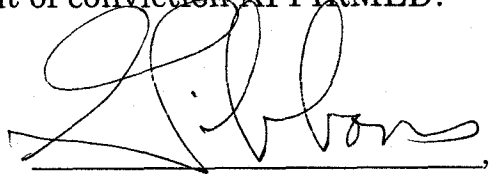
It is well established that a sentencing court may not punish a defendant for exercising his constitutional rights and that vindictiveness must


play no part in the sentencing of a defendant. The defendant has the burden to provide evidence that the district court sentenced him vindictively.<sup>3</sup>

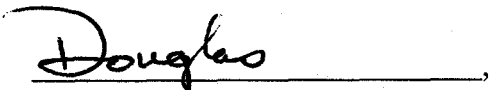
Our review of the record on appeal reveals no evidence of judicial vindictiveness, and we conclude that Palmer has failed to meet his burden.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.<sup>4</sup>

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

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Brent T. Adams, District Judge  
Washoe County Public Defender  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk  
Scott Anthony Palmer

<sup>3</sup>114 Nev. 1417, 1428, 971 P.2d 813, 820 (1998) (internal citations omitted), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

<sup>4</sup>Because Palmer is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Palmer has submitted to this court in this matter.