


IN THE SUPREME COURT OF THE STATE OF NEVADA

SPENCER JAMES PENGELLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49098

**FILED**

SEP 11 2007

JANE T. M. BLOOM  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of two counts of attempted murder. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Spencer James Pengelly to serve a prison term of 96 to 240 months for the first count and a consecutive term of 57 to 144 months for the second count.

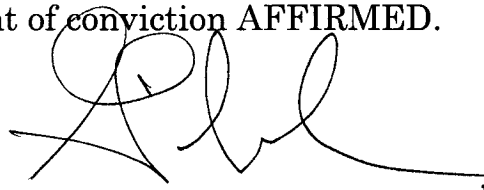
Pengelly contends that his sentence "was the result of [judicial] prejudice and hunches rather than a fair and even evaluation of the evidence and the testimony." He notes that at the close of the sentencing hearing, the district court stated "Mr. Pengelly, I don't know if this is some kind of Dr. Jekyll, Mr. Hyde approach, but I've sat with you through a lot of hearings and I don't know what you're capable of. I really don't and you frighten me." And he argues that this statement indicates that the district judge had closed his mind to the presentations of all the evidence.

The "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the

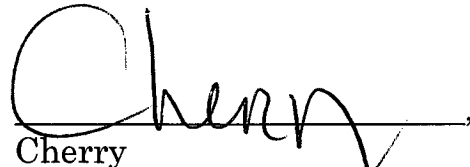
presentation of all the evidence."<sup>1</sup> Moreover, we have consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> We will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."<sup>3</sup>

The record on appeal belies Pengelly's contention that the district judge had closed his mind to the presentation of all the evidence, and nothing in the record indicates that the district court relied on impalpable or highly suspect evidence when imposing the sentence. Accordingly, we conclude that Pengelly's contention is without merit, and we

ORDER the judgment of conviction AFFIRMED.

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

Gibbons

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

Cherry

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

Saitta

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<sup>1</sup>Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

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

<sup>3</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

cc: Hon. J. Michael Memeo, District Judge  
Elko County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Elko County District Attorney  
Elko County Clerk