

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN WAYNE NAPRSTEK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49477

**FILED**

MAR 27 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of fourteen years. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Brian Naprstek to a prison term of 72 to 180 months.

Naprstek first contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Specifically, Naprstek contends that his plea was unknowing because his defense counsel failed to discuss the facts of the case and his possible defenses.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.<sup>1</sup> "On appeal from a district court's denial of a motion to withdraw a guilty

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<sup>1</sup>State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

plea, this court 'will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"<sup>2</sup>

The district court found that Naprstek's guilty plea was entered knowingly, voluntarily and intelligently. The district court's findings are supported by substantial evidence. The plea agreement, which Naprstek stated he read and signed, summarized the facts of the offense and specified that Naprstek had "discussed the charge(s), the facts and the possible defenses with [his] attorney." The district court thoroughly canvassed Naprstek and his responses during his plea canvass demonstrated an understanding of the criminal charges. Further, we note that the district court found that Naprstek's motivation for moving to withdraw his plea was based on the negative findings in his psychosexual assessment, and not his defense counsel's ineffectiveness. Accordingly, the district court did not abuse its discretion in denying Naprstek's motion to withdraw his guilty plea.

Naprstek next contends that the district court abused its discretion by imposing an excessive sentence. Specifically, Naprstek contends that the district court did not consider "the severity of his myriad addictions and his need for treatment." Further, Naprstek contends that

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<sup>2</sup>Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

the district court failed to consider his desire to change his life, his strong family support, and his cooperation with the State.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</sup> 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.”<sup>4</sup> Moreover, regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’”<sup>5</sup>

In the instant case, Naprstek does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>6</sup> Therefore,

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<sup>3</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

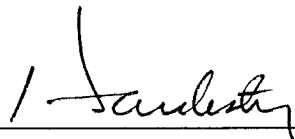
<sup>5</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

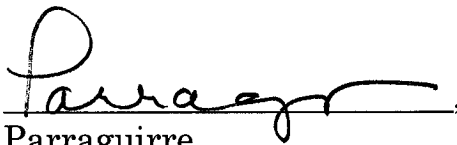
<sup>6</sup>See NRS 201.230; NRS 193.330(1)(a)(1).

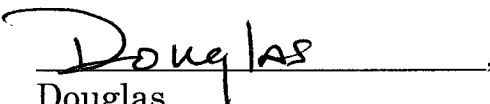
we conclude that the district court did not abuse its discretion at sentencing.

Having considered Naprstek's contentions and determined that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Connie J. Steinheimer, District Judge  
Jenny Hubach  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk