

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACY DAWN WEHDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50015

FILED

NOV 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING AND REMANDING

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of possession of a dangerous drug without a prescription, a gross misdemeanor. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Tracy Dawn Wehde to serve a jail term of 12 months and ordered her to pay a \$500 fine.

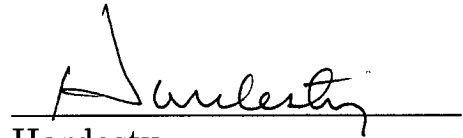
Wehde's sole contention on appeal is that the district court "erred by denying [her] the opportunity to address the only issue apparently of concern to anybody in mitigation at her sentencing." Wehde claims that the district court did not allow her to explain why she failed to appear for her presentence interview and her sentencing hearing. Wehde argues that the reasons for her failures to appear can be mitigating and therefore she is entitled to a new sentencing hearing before a different district court judge.

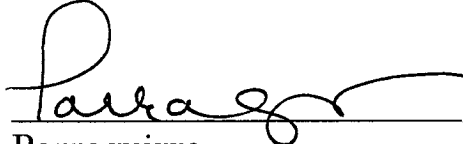
NRS 176.015 codifies the defendant's right of allocution. It requires the district court to "[a]ddress the defendant personally and ask

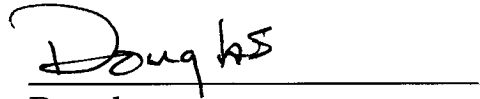
him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment" before passing sentence.¹

Here, the district court personally addressed Wehde and asked her if she had anything to say before sentencing. However, the district court did not permit Wehde to present the information that she thought should be considered in mitigation. We conclude that this error was not harmless and that this case must be remanded for a new sentencing hearing before the same district court judge.

Accordingly, we VACATE the judgment of conviction and REMAND for a new sentencing hearing consistent with this order.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹NRS 176.015(2)(b).