

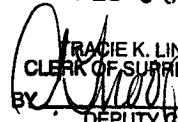
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH TODORA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50138

**FILED**

FEB 08 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of sexually-motivated coercion. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court sentenced appellant Joseph Todora to serve a prison term of 12-48 months and ordered him to pay \$300 in restitution.

Todora contends that the district court abused its discretion at sentencing. Todora argues that the district court's interpretation of NRS 176.139(1), requiring the Division of Parole and Probation (Division) to "arrange" for a psychosexual evaluation prior to sentencing, deprived him of his constitutional right to counsel and prevented him from presenting mitigating evidence and engaging in "meaningful participation in the sentencing process." Specifically, Todora claims that prior to finding him ineligible for probation,<sup>1</sup> the district court should have also considered the psychosexual evaluation prepared by his own expert and allowed counsel to argue in favor of probation. We disagree with Todora's contention.

NRS 176.139(1) provides as follows:

If a defendant is convicted of a sexual offense for which the suspension of sentence or the granting

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<sup>1</sup>See NRS 176A.110(1)(a), 3(n).

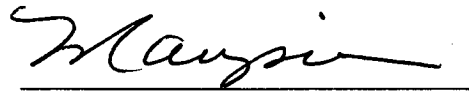
of probation is permitted, the Division shall arrange for a psychosexual evaluation of the defendant as part of the Division's presentence investigation and report to the court.


(Emphasis added.) The Division's psychosexual evaluation concluded that Todora was a high risk to reoffend. Todora's own expert found him to be a moderate risk to reoffend. At the sentencing hearing, the district court stated that it was obligated by statute to consider the Division's psychosexual evaluation, and accordingly, pursuant to NRS 176A.110(1)(a), found Todora ineligible for probation. The district court also stated, however, that it would consider the evaluation conducted by Todora's own expert prior to imposing the terms of his sentence.

Todora has failed to demonstrate that he was deprived of his right to counsel or prevented from presenting mitigating evidence at the sentencing hearing. Further, Todora has failed to provide any persuasive authority in support of his contention that the district court's interpretation of NRS 176.139(1) rendered the statute unconstitutional. Therefore, we conclude that the district court did not abuse its discretion.

Having considered Todora's contention and concluded that it is without merit, we

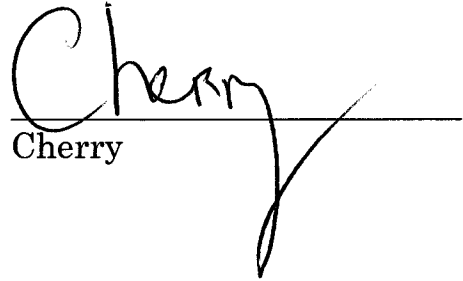
ORDER the judgment of conviction AFFIRMED.

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

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

CHERRY, J., dissenting:

I dissent. In my view, when a psychosexual evaluation is prepared under NRS 176.139(1) and challenged by the defense, the district court should sua sponte conduct an evidentiary hearing regarding the validity of the certification set forth in the psychosexual evaluation.

 J.  
Cherry

cc: Hon. Jennifer Togliatti, District Judge  
J. Chip Siegel, Chtd.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk