

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENVER DEAN PULLIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50444

**FILED**

OCT 02 2008

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY H. Ingosola  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of first-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

The State charged appellant Denver Dean Pullin with first-degree murder, alleging that he used a handgun to shoot Laurie Jean Lawrence multiple times in the head. During trial, Pullin decided to enter a nolo contendere plea without negotiations. The district court canvassed Pullin and accepted the plea. Thereafter, the district court sentenced Pullin to a term of life in prison without the possibility of parole, with a consecutive term of 8 to 12 years for the use of a deadly weapon.<sup>1</sup>

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<sup>1</sup>This court recently granted the State's petition for a writ of mandamus challenging the district court's decision to impose a sentence for the deadly weapon enhancement in this case under the ameliorative amendments to NRS 193.165, which took effect after Pullin committed the charged offense but before he was sentenced. State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, 188 P.3d 1079 (2008). We therefore instructed the district court to conduct a new sentencing hearing consistent with that opinion. Id. Because it appears unlikely that the issues presented in this appeal

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Pullin raises two issues in this appeal from the judgment of conviction: (1) the district court abused its discretion at sentencing by misinterpreting Pullin's reactions and conduct at sentencing as indicating a lack of remorse and then imposing a sentence of life in prison without the possibility of parole, and (2) the sentence of life in prison without the possibility of parole is excessive. For the reasons discussed below, we conclude that both issues lack merit.

Pullin first argues that the district court misinterpreted his demeanor while a recording of the victim performing a song was played during sentencing and, as a result, the district court abused its discretion in relying on its misinterpretation of Pullin's demeanor to impose a sentence of life without the possibility of parole.<sup>2</sup> We disagree. As this

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will be rendered moot by that hearing or an amended judgment of conviction to address the deadly weapon enhancement, we have elected to address the merits of those issues.

<sup>2</sup>Pullin filed a motion for reconsideration below, with an affidavit from counsel explaining that Pullin was reacting to comments by counsel regarding why counsel would not be cross-examining the witness who testified just before the recording was played and that it had nothing to do with Pullin's feelings about the victim or his remorse over what he had done. The motion was filed after the judgment of conviction was entered, and the district court apparently did not rule on the motion before Pullin had to file the notice of appeal, thus divesting the district court of jurisdiction to grant the motion. See Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that "[j]urisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court"). To the extent that counsel's conduct in this respect at the sentencing hearing may have been deficient and prejudiced Pullin at sentencing, such a claim of ineffective assistance of counsel must be raised

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court has recognized, the district court has wide discretion in its sentencing decision<sup>3</sup> and therefore 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> In this case, the district court was in the best position to view and consider Pullin’s demeanor during the sentencing hearing, and we are not convinced that the district court’s evaluation of Pullin’s demeanor was speculative or improper. Moreover, although it played a role in the district court’s sentencing determination, it clearly was not the sole basis for the district court’s sentencing decision. Rather, the facts of the case and Pullin’s life and characteristics also contributed to the district court’s decision. Under these circumstances, we cannot say that the district court abused its discretion.

Pullin also argues that the sentence of life without the possibility of parole is excessive given his lack of a significant criminal history or any prior felony convictions. We disagree. As explained above, the district court has broad discretion at sentencing, and this court will refrain from interfering with the sentence imposed except in limited circumstances. Moreover, regardless of its severity, a sentence that is

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in a timely post-conviction petition for a writ of habeas corpus filed in the district court. See Pelligrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

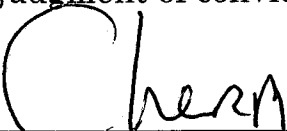
<sup>3</sup>See, e.g., Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

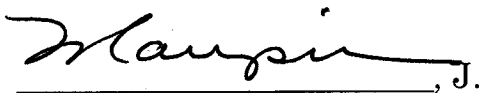
<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


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> Here, we have rejected any argument that the district court relied on impalpable or highly suspect evidence, and Pullin has not alleged that the relevant sentencing statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.<sup>6</sup> Accordingly, we conclude that Pullin has not demonstrated that the district court abused its broad discretion at sentencing.

Having considered appellant’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

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

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<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 200.030(4)(b).