

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTHIAN GRACIANO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50448

**FILED**

MAY 08 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of carrying a concealed weapon. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. The district court sentenced appellant Christian Graciano to a prison term of 360 days, suspended the sentence, and placed Graciano on probation for a term of 2 years.

Graciano contends that the district court erred in admitting and considering Officer Acosta's testimony regarding Graciano's alleged gang affiliation at the sentencing hearing. Graciano argues that this evidence prejudiced his sentencing because his conviction was not gang related.

We have consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> The district court may "consider a wide, largely unlimited variety of information to insure that the

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<sup>1</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

punishment fits not only the crime, but also the individual defendant.”<sup>2</sup> This information may include other criminal conduct even though the defendant was never charged or convicted of the conduct.<sup>3</sup> We will not interfere with the district court’s sentencing decision unless the record on appeal demonstrates “prejudice resulting from the consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.”<sup>4</sup>

At sentencing, Officer Acosta testified regarding Graciano’s previous interactions with law enforcement and past gang affiliations. Defense counsel was allowed to cross-examine Officer Acosta and to present a defense witness disputing that Graciano was a gang member. Graciano did not dispute that he “hung out” with gang members, and admitted that he was having difficulties with gang interactions. Graciano stated that he was planning on moving from the area in order to avoid further trouble. Further, the record does not demonstrate that Graciano was prejudiced by the admission of Officer Acosta’s testimony. The district court sentenced Graciano to 360 days, suspended the sentence, and placed him on probation. Accordingly, we conclude that the district court did not err in admitting Officer Acosta’s testimony regarding Graciano’s gang affiliation.

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<sup>2</sup>Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998), distinguished on other grounds by Ruvalcaba v. State, 122 Nev. 961, 143 P.3d 468 (2006); see also NRS 176.015(6).

<sup>3</sup>Sheriff v. Morfin, 107 Nev. 557, 560, 816 P.2d 453, 455 (1991).

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

Having considered Graciano's contention and determined that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Maupin, J.  
Maupin

Cherry, J.  
Cherry

Saitta, J.  
Saitta

cc: Hon. Kenneth C. Cory, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk