


IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER RANCE TANNO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52965

FILED

SEP 23 2009

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 grand larceny. Eighth Judicial District Court, Clark County; David B. Barker, Judge. The district court sentenced appellant Alexander Rance Tanno to serve a prison term of 18 to 40 months. The district court ordered the sentence to run consecutively to Tanno's sentences in two other criminal cases.

Tanno contends that the district court abused its discretion at sentencing by imposing his sentence to run consecutively to his other sentences rather than concurrently. Tanno argues that running sentences consecutively is equivalent to a sentencing enhancement that is statutorily authorized when the defendant is a habitual criminal. Tanno argues that the district court relied on "improper evidence" by considering his six prior felony convictions and other prior bad acts referenced in the presentence investigation report (PSI), and he contends that the State should be required to present prima facie evidence of his prior convictions before the district court may consider them in reaching its sentencing decision. Tanno further claims that the district court erred by failing to give him an opportunity to address the information presented in the PSI. We disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Further, it is within the broad discretion of the district court to impose consecutive sentences. See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 302-03, 429 P.2d 549, 552 (1967). The district court's discretion, however, is not limitless. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Nevertheless, we 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.” Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (emphasis added).

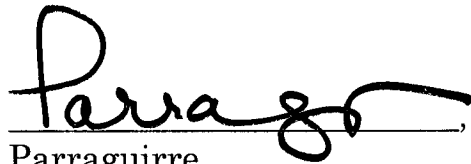
“The sentencing proceeding is not a second trial and the [sentencing] court is privileged to consider facts and circumstances which clearly would not be admissible at trial.” Id. at 93-94, 545 P.2d at 1161. Past criminal conduct, even conduct the defendant was never charged with or convicted of, is clearly relevant and may be considered by the sentencing court. See id. at 94 n.2, 545 P.2d at 1161 n.2. However, in reaching its sentencing decision, a district court may not rely on bald assertions of uncharged bad acts that are “unsupported by any evidence whatsoever.” Goodson v. State, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982).

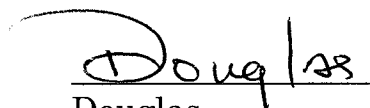
The information regarding Tanno’s prior felony convictions and prior bad acts was properly included in his PSI, see NRS 176.145(1)(a), (b), and because the district court did not adjudicate Tanno as a habitual criminal, it was not necessary for the State to provide prima facie evidence of the prior convictions before the district court imposed


sentence. Tanno's claim that he was not given an opportunity to address the information in the PSI is belied by the record. The district court specifically invited Tanno to address the court and present information in mitigation of his sentence, however, Tanno did not object to the information in the PSI or contest its accuracy. When imposing the consecutive sentence, the district court explained: "I'm sure you would [appreciate being given another chance with a concurrent sentence], but you've demonstrated by your criminal history that you haven't gotten the message during the last prior [six] felonies, and [three prior revoked] probations, and opportunities, direct counseling that you've received." The district court properly considered Tanno's prior felony convictions and prior bad acts when imposing the consecutive sentence. Therefore, we conclude that the district court did not abuse its discretion by imposing his sentence to run consecutive to his other sentences.

Having considered Tanno's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
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Attorney General Catherine Cortez Masto/Carson City
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Eighth District Court Clerk