IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER ORLANDO CRAWFORD, IV, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 53078
WALTER ORLANDO CRAWFORD, IV, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 53084

FILED
JUL 08 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

The appeal in Docket No. 53078 is from a judgment of conviction, entered pursuant to a guilty plea, of one count of felony driving under the influence. The appeal in Docket No. 53084 is also from a judgment of conviction, entered pursuant to a guilty plea, of one count of felony driving under the influence. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. In each case, the district court sentenced appellant, Walter Orlando Crawford, IV, to serve a prison term of 16-72 months, with the terms to be served concurrently. We elect to consolidate these appeals for purposes of disposition.[1] NRAP 3(b).

[1]We note that although the district court did not consolidate these cases below, it handled the cases simultaneously by conducting a single arraignment and a single sentencing hearing.

09-16704

Relevant facts and procedural history

On August 21, 2008, the State filed an information charging Crawford with one count of felony driving under the influence (DUI) (district court case number CR08-1744).[2] On September 30, 2008, the State filed an information charging Crawford with another count of felony DUI (district court case number CR08-2062). The parties entered into guilty plea agreements wherein Crawford agreed to plead guilty to both charges and the State agreed to recommend that the sentences run concurrently and that it would not object to Crawford's placement in felony DUI court, if he qualified.[3] Despite the State's acquiescence, the district court denied Crawford's application for diversion and sentenced him to two concurrent prison terms of 16-72 months. These appeals followed.

Discussion

Crawford raises the same issues in both appeals. First, Crawford contends that he should be permitted to withdraw his guilty pleas because the district court impliedly accepted the plea negotiations at the time Crawford entered his guilty pleas. Specifically, Crawford argues that this court's holding in Cripps v. State, 122 Nev. 764, 137 P.3d 1187 (2006), should be extended to allow a defendant to withdraw a guilty plea if, after a plea agreement is reached, the district judge expresses an

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[2]Crawford had two prior DUI convictions.

[3]Although not memorialized in the guilty plea agreement, it appears from the transcript of the arraignment that the State also agreed to treat each conviction as a first offense felony DUI.

inclination to follow the agreement, but then deviates from the recommended sentence. We disagree.

In Cripps, this court expressly prohibited "any judicial participation in the formulation or discussions of a potential plea agreement with one narrow, limited exception: the judge may indicate on the record whether the judge is inclined to follow a particular sentencing recommendation of the parties." Id. at 770-71, 137 P.3d at 1191. If a district court does express such an inclination, but later reconsiders and determines that a more severe sentence is warranted, the defendant must be permitted to withdraw his guilty plea. Id. at 771, 137 P.3d at 1191-92. The holding in Cripps is specifically "limited to judicial involvement and discussion during the plea negotiation process prior to any agreement between the parties; it does not apply to the court's conduct of the plea canvass after a plea agreement has been reached by the parties." Id. at 771 n.24, 137 P.3d at 1191 n.24.

In formulating this bright-line rule, this court identified three primary concerns regarding judicial involvement in plea negotiations. Specifically, we explained that such involvement may: (1) "coerce the defendant into an involuntary plea that he would not otherwise enter," (2) give rise to suspicion regarding the judge's impartiality and objectivity, and (3) affect the judge's impartiality after negotiations are complete. Id. at 768-69, 137 P.3d at 1190 (internal quotation omitted).

Here, after being informed of the plea agreements, the district court reminded Crawford that it had discretion to send him to diversion and informed him that: "One of the things I look for when I'm granting the election is to see how serious people take it. And one of the indicators of seriousness is getting into some kind of program: AA, any kind of rehab

program." Crawford concedes that the statement was made during the plea canvass, after negotiations were complete. Thus, even if the statement can be interpreted as an implied acceptance of the plea agreement, Cripps is inapplicable to the instant case. Further, we decline to extend Cripps to allow a defendant to withdraw a guilty plea based upon a judge's comments made after the parties have reached a plea agreement. Crawford has failed to offer any authority for the proposed extension and we conclude that such an extension would not serve any of the policy considerations supporting our holding in Cripps. Accordingly, we conclude that Crawford is not entitled to withdraw his guilty plea based on the district court's implied acceptance, if any, of the completed plea negotiations.

Crawford next contends that the district court abused its discretion at sentencing. Specifically, Crawford alleges that the district court violated Crawford's right to due process because it denied Crawford's application for diversion based on "what might someday happen in some hypothetical future case involving some other putative defendant." We disagree.

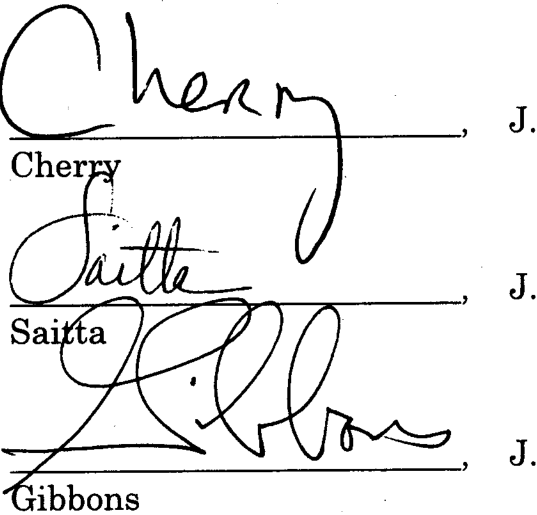
We have consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). "[A] sentencing proceeding is not a second trial, and the court" may consider circumstances and facts that would be inadmissible at trial. Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). However, "this court will reverse a sentence if it is supported solely by impalpable and highly suspect evidence." Id.

Here, the district court based its decision to deny Crawford's application for diversion based on Crawford's criminal record. Specifically,

the district court noted that Crawford had four prior felony convictions and was arrested for felony DUI while awaiting disposition on a previous charge of felony DUI. The district court also expressed its concern that granting diversion to a person with so many prior convictions would set an inappropriate precedent. Thus, Crawford's sentence was not based solely on impalpable or highly suspect evidence. Further, we note that the sentences imposed were within the parameters provided by the relevant statute. See NRS 484.3792(1)(c). Accordingly, we conclude that that the district court did not abuse its discretion in sentencing Crawford.

Having considered Crawford's contentions and concluded they are without merit, we

ORDER the judgments of conviction AFFIRMED.



_______________, J.
Cherry

_______________, J.
Saitta

_______________, J.
Gibbons

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