

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY SCOTT WINBURN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53827

FILED

DEC 23 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a no contest plea, of third-offense driving under the influence. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant Jeffrey Scott Winburn to serve a prison term of 12-30 months and ordered him to pay a fine of \$2,000.

Abuse of Discretion at Sentencing: NRS 484.37941

Winburn contends that the district court abused its discretion at sentencing by denying his application for deferral of judgment and treatment pursuant to NRS 484.37941. Without explanation, Winburn claims that “[t]he court’s sentence was intended to punish [him] for matters unrelated to his crime.” We disagree.

“[T]he provisions set forth in NRS 484.37941 . . . merely give the district court discretion to allow a defendant to complete a treatment program in order to obtain a conviction and sentence for a lesser offense.” Picetti v. State, 124 Nev. ___, ___, 192 P.3d 704, 712 (2008); see also Stromberg v. Dist. Ct., 125 Nev. ___, ___ n.2, 200 P.3d 509, 510 n.2 (2009). The provisions do not require the district court to grant a defendant’s application for treatment. Picetti, 124 Nev. at ___, 192 P.3d at 712. Further, this court has consistently afforded the district court wide

discretion in its sentencing decision. Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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 district court conducted a hearing on Winburn’s application for deferral of judgment and admission into the DUI diversion program and found that he “failed to satisfy the prerequisites for admission” as previously ordered by the court. The court noted that Winburn failed to obtain a drug and alcohol evaluation, develop a treatment plan, install a breath alcohol ignition interlock device, and participate in an active house arrest program. Despite his assertion to the contrary, the district court found that Winburn “had ample time (at least two months) to comply with the prerequisites.” Winburn has offered no argument in support of his allegation that the district court denied his application and sentenced him to a prison term “for matters unrelated to his crime.” And we note that the sentence imposed was within the parameters provided by the relevant statute. See NRS 484.3792(1)(c); see also Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004), limited on other grounds by Knipes v. State, 124 Nev. ___, 192 P.3d 1178 (2008). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Sentencing Delay

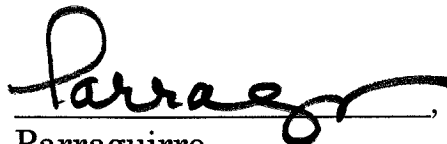
Winburn contends that the district court violated his due process rights under the Sixth and Fourteenth Amendments to the United

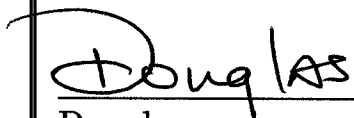
States Constitution and NRS 176.015(1) because his sentencing did not occur for more than one year after the entry of his plea. We disagree.

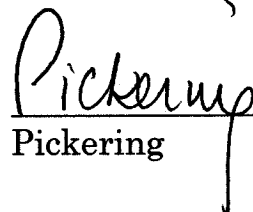
Initially, we note that Winburn has not provided any cogent argument or persuasive legal authority in support of his allegation that the one-year delay between the entry of his plea and sentencing requires that his sentence “be set aside.” See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”). We also note that Winburn never asserted his right to a speedy trial. See Prince v. State, 118 Nev. 634, 641, 55 P.3d 947, 951 (2002) (applying the four-part test set forth in Barker v. Wingo, 407 U.S. 514, 530 (1972) to determine whether a delay in sentencing was unreasonable). Further, our review of the record reveals that Winburn either initiated or voluntarily agreed to multiple stipulations to continue for reasons inuring to his benefit. Therefore, we conclude that the district court did not violate Winburn’s right to due process. See id. (“Delay in sentencing that is not purposeful or oppressive on the part of the government does not violate a defendant’s due process rights.”).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Andrew J. Puccinelli, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk