

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS HAYDEN CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53832

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of voluntary manslaughter with the use of a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, appellant Dennis Hayden Campbell contends that the district court abused its discretion at sentencing by imposing an excessive prison term rather than probation. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Campbell has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Further, the granting of probation is discretionary and Campbell's sentence falls within the parameters provided by the relevant statutes. See NRS 176A.100(1)(c); NRS 193.165(1); NRS 200.080. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Second, Campbell contends that the district court erred by allowing the admission of prior bad act evidence. “A district court’s decision to admit or exclude evidence of prior bad acts rests within its sound discretion and will not be reversed . . . absent manifest error.” Somee v. State, 124 Nev. 434, 446, 187 P.3d 152, 160 (2008). Here, the testimony about a prior incident between Campbell and the victim was relevant to show intent. See NRS 48.045(2); see also Ochoa v. State, 115 Nev. 194, 200-01, 981 P.2d 1201, 1205-06 (1999) (evidence of prior bad acts admissible and relevant to establish animosity between defendant and victim and “to show motive and rebut the assertion of self defense”). Therefore, we conclude that the district court did not err.

Third, Campbell contends that the district court erred by failing to provide a limiting instruction prior to the admission of the bad act evidence. See Tavares v. State, 117 Nev. 725, 731, 30 P.3d 1128, 1132 (2001), modified by Mclellan v. State, 124 Nev. 263, 270, 182 P.3d 106, 111 (2008). While the district court did not instruct the jury prior to the admission of the evidence, it did, however, instruct the jury on the use of the evidence at the close of the case and prior to deliberations. See Leonard v. State, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (providing that this court presumes that the jury follows the district court’s instructions). We conclude that the court’s failure to give the limiting instruction at the time of admission was harmless because it “did not have a substantial and injurious effect or influence the jury’s verdict.” Rhymes v. State, 121 Nev. 17, 24, 107 P.3d 1278, 1282 (2005); see also Kotteakos v. United States, 328 U.S. 750, 776 (1946).

Having considered Campbell's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
Jenny Hubach
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk