

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIMON FAUSTO DUENAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55489

FILED

SEP 09 2010

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 possession of a stolen firearm and being an ex-felon in possession of a firearm. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

First, appellant Simon Fausto Duenas contends that the prosecutor violated his right to due process and confrontation at sentencing by presenting argument consisting of hearsay statements alleging prior bad acts. Duenas failed to object to the prosecutor's claim that he threatened to use the stolen firearm to shoot his girlfriend and kill another individual over a drug debt, and he has failed to satisfy his burden and demonstrate that he was prejudiced in any way amounting to reversible plain error. See NRS 178.602; Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Additionally, the district court sustained Duenas' objection to the prosecutor's claim that he threatened the adoptive family of two of his children and we conclude that he has failed to demonstrate that he was prejudiced by the statement. See Sherman v. State, 114 Nev. 998, 1010, 965 P.2d 903, 912 (1998) ("This court has held that in order for prosecutorial misconduct to constitute reversible error, it must be prejudicial."); Randell v. State, 109 Nev. 5, 7-8, 846 P.2d 278, 280

(1993) (“[J]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence.” (quoting People v. Mockel, 276 Cal. Rptr. 559, 563 (Ct. App. 1990))).

Second, Duenas contends that the district court abused its discretion by determining his sentence before hearing all of the relevant evidence. This court will not disturb a district court’s sentencing determination absent an abuse of discretion. Randell, 109 Nev. at 8, 846 P.2d at 280. Duenas has not demonstrated that the district court relied solely on impalpable or highly suspect evidence or alleged that the relevant sentencing statutes are unconstitutional. See Denson v. State, 112 Nev. 489, 492-93, 915 P.2d 284, 286-87 (1996); see also Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). Further, Duenas has failed to demonstrate that the district court determined what sentence to impose before hearing the relevant evidence and argument from counsel. And finally we note that the granting of probation is discretionary and Duenas’ sentence falls within the parameters provided by the relevant statutes. See NRS 176A.100(1)(c); NRS 202.360(1)(a); NRS 205.275(2)(c). Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Duenas’ contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk