

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35127

JAMES DEAN CHURCH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

APR 12 2000

JANETE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction pursuant to a guilty plea of second degree kidnapping and robbery. The district court sentenced appellant to consecutive terms of twenty-four (24) to sixty (60) months in prison on the kidnapping count, and twenty-four (24) to sixty (60) months on the robbery count.

Appellant contends his right to due process was violated because the district court relied on "impalpable or highly suspect" evidence in ordering the sentences to run consecutively rather than concurrently. We disagree.

Appellant argues the testimony of the victim at sentencing was false and exaggerated, and generally exceeded the scope of NRS 176.015(3). However, our review of the record shows that the victim testified as to the impact of the crime on the victim, and her views concerning the crime. Appellant has not demonstrated this testimony was false or exaggerated. Appellant's argument is therefore without merit.

Appellant further argues the State misinformed the court as to the law at sentencing. Specifically, appellant argues that the State argued for an enhancement based on the age of the victim. The record shows, however, the State did

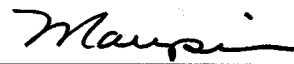
not argue that each of the counts should be enhanced, but rather, that the two counts should run consecutively rather than concurrent to one another.

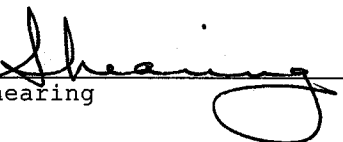
Finally, appellant argues the district court relied on an incorrect belief appellant targeted the victim because of her age, her sex, and her size, despite appellant's testimony the selection of the victim was random. After observing appellant and assessing his credibility, the district court did not believe his testimony. See Hill v. State, 114 Nev. 169, 180, 953 P.2d 1077, 1085 (1998); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20, (1981) (it is up to the trier of fact to determine credibility of evidence). Accordingly, the district court fashioned a sentence pursuant to its discretion. Appellant has failed to demonstrate the district court's conclusions were improper.

In sum, the sentence was not based on impalpable or highly suspect evidence.

Having considered appellant's contention and concluded that it is without merit, we

ORDER this appeal dismissed.


_____, J.
Maupin


_____, J.
Shearing


_____, J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk