IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN D. FARREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56903

FILED

NOV 18 2011

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 an Alford[1] plea, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Benjamin D. Farrey raises two issues on appeal.

Because Farrey failed to object on either issue below, we review his claims for plain error affecting his substantial rights. See NRS 178.602; Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000).

First, Farrey argues the district court abused its sentencing discretion. Specifically, Farrey contends that the district court relied on impalpable evidence proffered by the prosecutor and the victim's family, and found in the presentence investigation report (PSI). A sentencing court is privileged to consider facts and circumstances that would not be admissible at trial. Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). This court will only "reverse a sentence if it is supported solely by impalpable and highly suspect evidence." Id. Here, the prosecutor merely commented on the evidence and invited the judge to draw reasonable

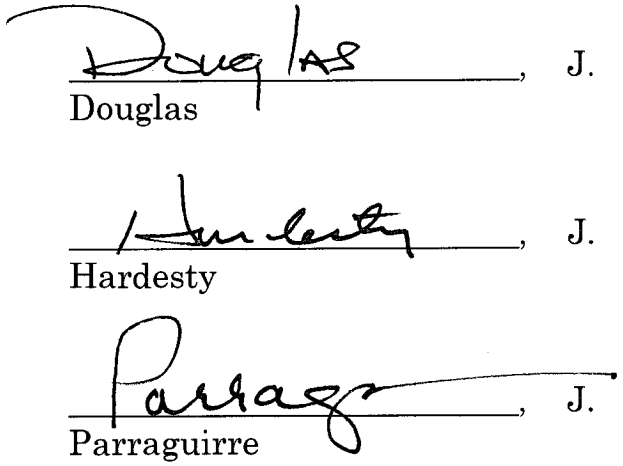
[1]North Carolina v. Alford, 400 U.S. 25 (1970).

inferences. See Bridges v. State, 116 Nev. 752, 762, 6 P.3d 1000, 1008 (2000). Next, NRS 176.145(1)(b) grants the Division of Parole and Probation broad authority to include information in the PSI that is "helpful in imposing [a] sentence." Finally, the victim's parents reasonably expressed views concerning the crime. NRS 176.015(3). After reviewing the record, we conclude there is no plain or constitutional error in the district court's sentencing determination.

Second, Farrey contends the district court failed to make a sufficient record under NRS 193.165 to support the sentence imposed for the deadly weapon enhancement. The district court must articulate findings regarding each of the enumerated factors for each deadly weapon enhancement. See Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 507-08 (2009). Here, the district court only stated, "The court is mindful of the conditions set therein, and is considering A through E, the factors along with all other circumstances surrounding the case." Although the better practice would have been for the district court to make specific findings as mandated by Mendoza-Lobos, the record provides sufficient justification for the sentence and the failure to explain that ruling more completely does not render it constitutionally defective. See, e.g., Arizona v. Washington, 434 U.S. 497, 516-17 (1978). Accordingly, the trial court's omission did not cause any prejudice or a miscarriage of justice and thus does not warrant relief.

Having considered Farrey's arguments and concluded that they lack merit,[2] we

ORDER the judgment of conviction AFFIRMED.



Douglas, J.

Hardesty, J.

Parraguirre, J.

cc: Hon. Donald M. Mosley, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[2]Farrey argues that his counsel was ineffective for not objecting to the district court's consideration of certain evidence and its failure to make a sufficient record to support the deadly weapon enhancement. We have consistently refused to consider claims of ineffective assistance of counsel on direct appeal, Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995), as they are more appropriately raised in the district court in the first instance by way of a post-conviction petition for a writ of habeas corpus, Gibbons v. State, 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981).