IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNDEN PAUL HARKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57274

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to an Alford plea, of burglary with the use of a deadly weapon and assault with the use of a deadly weapon. See North Carolina v. Alford, 400 U.S. 25 (1970). Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant Lynden Paul Harker contends that the district court abused its discretion at sentencing by (1) failing to review the mitigating factors involved in this case, specifically, Harker's mental condition due to the loss of his child and his mindset resulting from the ingestion of drugs prior to the offense; (2) focusing its sentencing determination on his past conduct; and (3) failing to consider his drug evaluation and rehabilitation needs. We conclude these contentions lack merit.

First, Harker's claim that the district court did not consider the mitigating evidence is belied by the record. The mitigating evidence was contained in the presentence investigation report and related by Harker in court, and the district court stated that it considered each of these sources.

Second, the district court did not err by considering Harker's criminal history because it was relevant to the court's sentencing

determination. See NRS 176.015(6); Tanksley v. State, 113 Nev. 844, 848, 944 P.2d 240, 242 (1997) (sentencing court has discretion to consider defendant's prior record). To the extent Harker contends that the district court imposed his sentence based only on his past offenses, this contention lacks merit because the district court also considered the nature of the current offenses and its duty to serve justice.

Third, it appears from the record that the district court did consider Harker's drug evaluation and rehabilitation needs and Harker's claim to the contrary is therefore belied by the record. Further, because of the nature of the current offenses and Harker's criminal history, he was ineligible to attend a program of treatment pursuant to NRS 453.580, see NRS 458.300(1)(a), (4), or to have the proceedings suspended and be placed on probation pursuant to NRS 453.3363(1). Thus, to the extent Harker contends that the district court abused its discretion by denying his application for self-paid, pre-sentencing drug treatment, this contention also lacks merit.

Finally, we note that Harker's concurrent prison sentences of 62 to 156 months and 24 to 60 months are within the statutory limits, see NRS 200.471(2)(b); NRS 205.060(4), Harker does not allege that the district court relied on any "impalpable or highly suspect evidence," Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976), and it was within the district court's discretion to refuse his request for probation, NRS 176A.100(1)(c). We conclude that the district court did not abuse its

discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.

Cherry

Gibbons, J.

Gibbons

Pickering, J.

Pickering

cc: Hon. Dan L. Papez, District Judge
David D. Loreman
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk