

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD PHILIP POLASKE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57896

**FILED**

SEP 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of felony driving while under the influence of alcohol. First Judicial District Court, Carson City; James E. Wilson, Judge.

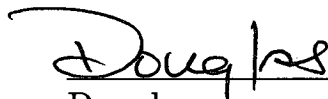
Appellant Donald Philip Polaske contends that the district court abused its discretion at sentencing by denying his application for a diversion program. Polaske claims that the Carson City Department of Alternative Sentencing's report and the presentence investigation report contained impalpable and highly suspect evidence and there is no indication that the author of the alternative sentencing report was qualified to contradict recommendations made by a drug and alcohol counseling expert.

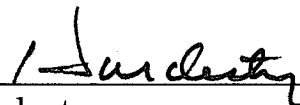
We review a district court's sentencing decision for an abuse of discretion. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). During sentencing, Polaske informed the district court of discrepancies in the reports and argued for placement in a diversion program; the Department of Alternate Sentencing stood by its report, noting that Polaske had completed one treatment program and had been terminated


from or failed to complete four others; and the State asserted that Polaske was a threat to the community, he had plenty of opportunities to get counseling, and he was not a good candidate for a diversion program. The district court stated that its primary concern was public safety and denied Polaske's application for a diversion program because at the time of his offense he had a blood-alcohol level of .129, he was driving on a suspended license, and he was traveling at a speed of 89 mph inside of Carson City.

We conclude that Polaske has not demonstrated that the district court's sentencing decision was based solely on impalpable or highly suspect evidence, see Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996), that it improperly considered the report prepared by the Department of Alternative Sentencing, see Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998), or that it abused its discretion by denying his application for a diversion program and sentencing him to a prison term of 12 to 36 months, see NRS 484C.340(5); NRS 484C.400(1)(c); NRS 458.320(3). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. James E. Wilson, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk