

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIAN D'MARC HALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58407

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of sexual assault with the use of a deadly weapon and battery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Appellant Damian Hall raises three issues on appeal.

First, Hall contends that the district court abused its discretion by refusing to withdraw his guilty plea. NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). In this case, Hall argues that his plea decision was overly rushed.¹ However, the district court thoroughly

¹Hall also argues that his counsel was ineffective in his handling of the case. 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
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canvassed Hall prior to accepting his plea. During that canvass, Hall was asked three times if he needed additional time. He responded in the negative. We conclude that the district court adequately reviewed the record and did not abuse its discretion by denying Hall's motion to withdraw his guilty plea. See Olivares v. State, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008).

Second, Hall contends that the district court abused its discretion by failing to order a competency evaluation before sentencing. A person is incompetent if he does "not have the present ability to understand either the nature of the criminal charges against him or the nature and purpose of the court proceedings, or is not able to aid and assist his counsel in the defense." Id. at 1147, 195 P.3d at 868. Here, defense counsel expressed concerns about Hall's competency. In response, the district court reviewed prior competency reports, the plea canvass, and proper person court filings. Id. at 1149, 195 P.3d at 869 (stating that "the district court may consider all available information" calling the defendant's competency into question). We conclude that the district court did not abuse its discretion by failing to order a competency hearing because the district court had no "reasonable doubt" regarding Hall's competency. Id. at 1148, 195 P.3d at 868.

Finally, Hall contends that the district court's restitution order must be reversed because there is no reliable and accurate evidence


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writ of habeas corpus, Gibbons v. State, 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981).

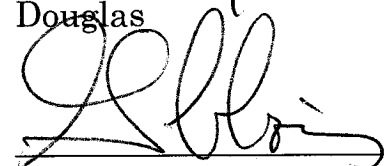
in the record to support it. We generally will not disturb a district court's sentencing determination so long as it does not rest upon impalpable or highly suspect evidence. Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). NRS 176.145(1)(c) grants investigation into a victim's financial loss "solely at the discretion" of the court or the Division of Parole and Probation. A Division of Parole and Probation official informed the district court that she had personally called the Nevada Victims of Crime Program and was told the restitution amount. Because the information regarding the victim's loss was not impalpable or highly suspect, the district court did not abuse its discretion.

Having considered Hall's arguments and concluding they lack merit, we

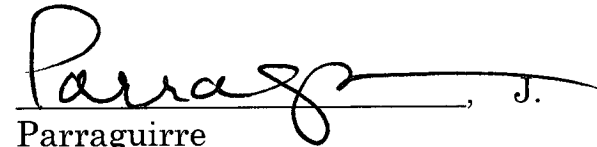
ORDER the judgment of conviction AFFIRMED.

 _____, J.

Douglas

 _____, J.

Gibbons

 _____, J.

Parraguirre

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk