

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO TRUJILLO MARIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59122

FILED

APR 12 2012

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

ORDER VACATING SENTENCE AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted possession of stolen property. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant Genaro Trujillo Marin contends that the district court abused its discretion by giving the victim of a crime Marin did not plead guilty to the opportunity to testify during his sentencing hearing. We agree. Over Marin's objection, the district court considered the unsubstantiated allegations of a witness who alleged that Marin burglarized her home and stole a laptop and other items worth over \$900. Marin was not charged with these crimes and only pleaded guilty to a crime involving a different victim. After reviewing the transcript from Marin's sentencing hearing, we conclude that the witness's testimony resulted in prejudice.¹ Although a judge is allowed wide discretion in sentencing, the consideration of impalpable or highly suspect evidence

¹We also note that the offense synopsis contained in the Presentence Investigation Report is inconsistent with the testimony of the witness and the representations of both parties during the sentencing hearing and may not be an accurate reflection of the charged offenses.

which results in prejudice constitutes an abuse of discretion that necessitates a resentencing. Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996); Silks v. State, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976). Therefore, we

ORDER the sentence of the district court VACATED AND REMAND this matter to the district court for a new sentencing hearing.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Chief Judge, The Eighth Jud. Dist. Ct.
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk