IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNIE DAVID EVENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59503

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of domestic battery. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, appellant Johnnie David Evenson contends that the district court erred by sentencing him pursuant to NRS 200.485(1)(c) (category C felony) without reviewing the two convictions offered by the State for enhancement purposes. Evenson claims that his felony domestic battery conviction must be reversed and the matter remanded for sentencing as a misdemeanor. We disagree.

Pursuant to NRS 200.485(4), "[t]he facts concerning a prior offense must be alleged in the . . . information . . . [and] must be proved at the time of sentencing." The State has the burden to present prima facie evidence of prior felony convictions and to establish the constitutional validity of prior misdemeanor convictions, see Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991); see also Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996), unless a defendant waives or stipulates to their proof, see Hodges v. State, 119 Nev. 479, 484-85, 78 P.3d 67, 70 (2003); Krauss v. State, 116 Nev. 307, 309-311, 998 P.2d 163, 164-65 (2000) (concluding that defendant's statements on the record

constituted a waiver and obviated the need for the State to offer proof of his prior convictions); see also Hobbs v. State, 127 Nev. ___, ___ n.4, 251 P.3d 177, 181 n.4 (2011).

Here, the criminal information listed two prior domestic battery convictions: a misdemeanor in 2011 and a felony in 2005. At the arraignment, Deputy Public Defender Sean Sullivan informed the district court that Evenson "desires to enter a guilty plea this morning to the single count of domestic battery, a felony offense, as charged in the Information." Evenson stipulated "to immediate sentencing" after entry of his guilty plea and waived the preparation of a presentence investigation report. The prosecutor read the charge as written in the criminal information, noting the priors, after which Evenson indicated that he understood. Sullivan informed the district court that he reviewed the two prior convictions the State was prepared to admit and made no objections. According to the district court minutes and the record on appeal, the judgments of conviction and several related documents were admitted as an exhibit during the sentencing hearing; these documents, among other things, established the constitutional validity of the prior misdemeanor conviction. Based on the above, we conclude that Evenson is not entitled to relief.

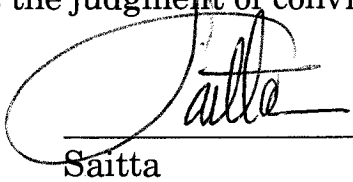
Second, Evenson contends that the district court relied on highly suspect and impalpable evidence at sentencing. Evenson specifically takes issue with "accusations" made by the victim during her impact statement and the district court's comment that Evenson "ha[s] a very chronic addiction to alcohol and perhaps controlled substances."

This court will not disturb a district court's sentencing determination absent an abuse of discretion. See Parrish v. State, 116

Nev. 982, 989, 12 P.3d 953, 957 (2000). Here, Evenson fails to demonstrate that the district court relied solely on the alleged impalpable or highly suspect evidence. See Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). Moreover, Evenson's prison term of 24-60 months falls within the parameters provided by the relevant statutes. See NRS 193.130(2)(c) (category C felony punishable by a prison term of 1-5 years and a fine not to exceed $10,000); NRS 200.485(1)(c). We conclude that the district court did not abuse its discretion at sentencing.

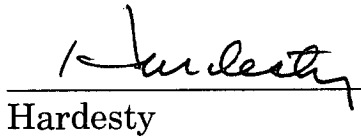
Third, Evenson contends that the State breached the plea agreement by not recommending the agreed-upon sentence of 12-30 months. Evenson's contention is belied by the record. Defense counsel stated the terms of the negotiations and informed the district court that "it is also my understanding the State will recommend no more than 12 to 30 months," to which the prosecutor replied, "That is a correct reflection of our understanding as well." We conclude that the prosecutor did not breach the terms or spirit of the plea agreement. See Sparks v. State, 121 Nev. 107, 110, 110 P.3d 486, 487 (2005). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Saitta

_____, J.
Pickering



_____, J.
Hardesty

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