

IN THE SUPREME COURT OF THE STATE OF NEVADA

CALEB JASON WOGBERG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59517

FILED

JUN 13 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Angora*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of false imprisonment. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.


Appellant Caleb Jason Wogberg contends the district court abused its discretion by concluding that the State was not obligated to concur with the Division of Parole and Probation's recommendation in the initial presentence investigation report (PSI) because the Division's recommendation of a deferred sentence pursuant to NRS 176A.250 did not "comply with the law." See NRS 176.145 (delineating the contents and information to be included in a PSI); see also NRS 176A.260(2) ("If the offense committed by the defendant involved the use or threatened use of force or violence . . . the court may not assign the defendant to the program unless the prosecuting attorney stipulates to the assignment.").

At Wogberg's initial sentencing hearing before District Judge Polaha, the State objected to the PSI, its recommendation for a deferred sentence and participation in a Mental Health Court diversion program, and moved to have it stricken. The district court recused itself pursuant to Echeverria v. State, 119 Nev. 41, 44, 62 P.3d 743, 745 (2003), after finding that the State's failure to concur with the Division's

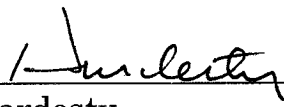
recommendation amounted to a breach of the plea agreement. Prior to the next sentencing hearing before District Judge Berry, the Division submitted a corrected PSI and instead recommended a suspended prison term of 12-36 months and probation. The district court conducted a hearing, heard from several Division representatives and counsel for the parties, and stated that it would consider the corrected PSI. The State, in keeping with the terms and spirit of the plea negotiations, concurred with the Division's recommendation, which the district court subsequently followed.

We conclude that Wogberg is not entitled to relief. After District Judge Polaha recused himself based on the alleged breach of the plea by the State, Wogberg received the relief he was entitled to—a new sentencing hearing before a different district court judge. See id. No statute then precluded the Division from submitting a corrected PSI. See generally NRS 176.135(3) (“the presentence investigation and report must be made before the imposition of sentence”). Moreover, Wogberg fails to demonstrate that the district court was required to consider the initial PSI and not the corrected PSI, or that the State breached the plea agreement by concurring with the recommendation in the Division's corrected PSI. Therefore, we conclude that the district court did not abuse its discretion, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk