

IN THE SUPREME COURT OF THE STATE OF NEVADA

MACK MARKEESE BRASSEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60012

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

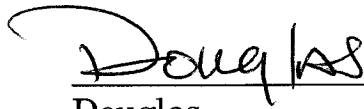
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of discharging a firearm out of a motor vehicle. Second Judicial District Court, Washoe County; David A. Hardy, Judge.


Appellant Mack Brassel argues that the district court abused its discretion at sentencing by considering a suggestion in the PSI and the prosecutor's statement that Brassel was responsible for shooting a young partygoer. Brassel contends it was never proven that he was the shooter and that the court would have likely sentenced him to probation based upon his youth had it not considered the statement.

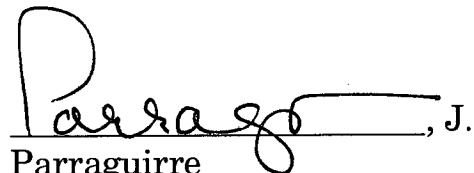
The district court is privileged to consider facts and circumstances contained in the PSI which clearly would not be admissible at trial so long as they have some indicia of reliability. See Silks v. State, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976); United States v. Weston, 448 F.2d 626, 633 (9th Cir. 1971). The record demonstrates that the court considered multiple factors in its decision and did not base its sentence solely upon the prosecutor's statement. Moreover, the court explicitly acknowledged that while whether Brassel shot the partygoer was in dispute, his discharge of a firearm at a crowded gathering was not. This court has consistently afforded the district court wide discretion in

sentencing, and the degree to which the court considers youth and other potentially mitigating offender characteristics is within that discretionary authority. Deveroux v. State, 96 Nev. 388, 390, 610 P.2d 722, 723-24 (1980). We also note that the sentence imposed was within the parameters provided by the relevant statute. See NRS 202.287(1)(b). Therefore, we conclude that Brassel has not demonstrated that the district court's sentencing decision was based solely on impalpable or highly suspect evidence and that it did not abuse its discretion. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. David A. Hardy, District Judge
Law Office of Gemma Greene Waldron, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk