

IN THE SUPREME COURT OF THE STATE OF NEVADA

KINEISHA SMITH-WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63327

FILED

JAN 21 2014

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

ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree kidnapping. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

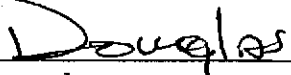
Appellant Kineisha Smith-White contends that the district court abused its discretion by imposing a sentence with a minimum term longer than that recommended by the Division Parole and Probation (P&P) and denying her request for probation. Smith-White also claims the district court increased her sentence by running it consecutively to an expired sentence. We disagree.

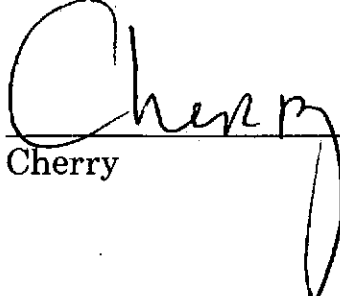
We review a district court's sentencing decision for an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). At sentencing, the district court considered the fact that Smith-White had committed the instant offense while on probation for a prior conspiracy-to-commit-burglary gross misdemeanor charge. This evidence is neither impalpable nor highly suspect. The district court did not abuse its discretion when it considered

this information and denied her request for probation. See NRS 176A.100(1)(c) (imposition of probation is discretionary). Further, although Smith-White's prison term of 40 to 100 months exceeds the term recommended by P&P, it is within the parameters provided by the relevant statute, see NRS 200.330, and we conclude the district court did not abuse its discretion when imposing the sentence, see *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972) (sentence imposed in excess of P&P recommendation not abuse of discretion). Finally, the fact that the district court imposed Smith-White's sentence to run consecutively to an expired sentence is of no consequence because it did not increase the length of her sentence in this matter. See NRS 176.035(1). Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

¹Smith-White's counsel failed to file the transcript request form as directed in this court's orders of July 3, 2013, and July 26, 2013. See NRAP 3C(d)(3)(A)(iii). Further, the fast track statement does not comply with the formatting requirements of NRAP 3C(h)(1) and NRAP 32(a)(4), (6), because the text is not double-spaced and is in bold-face type. Additionally, the "Verification" in the fast track statement improperly certifies that the fast track statement does not exceed 30 pages. See NRAP 3C(e)(1)(B) (length of fast track statement limited to 15 pages); NRAP Form 6. We caution counsel for Smith-White that future failure to comply with the rules of this court may result in the imposition of sanctions. See NRAP 3C(n).

cc: Hon. David A. Hardy, District Judge
Suzanne M. Lugaski
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk