

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILFRED JAMES TONEY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63697

WILFRED JAMES TONEY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63698

FILED

MAR 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND DIRECTIONS TO CORRECT
CLERICAL ERROR IN THE JUDGMENTS OF CONVICTION*

These are appeals from judgments of conviction, pursuant to guilty pleas, of burglary, possession of a stolen motor vehicle, and grand larceny of a firearm. Second Judicial District Court, Washoe County; David A. Hardy, Judge. We elect to consolidate these appeals for disposition. *See* NRAP 3(b)(2).

Appellant Wilfred James Toney, Jr., contends that the district court abused its discretion at sentencing by relying on highly suspect or impalpable information. Toney specifically takes issue with comments the district court made about his participation in and termination from the regimental discipline program. We disagree with Toney's contention.

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). Toney fails to demonstrate that the district court relied solely on impalpable or highly suspect evidence. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Toney's

two concurrent prison terms of 30-75 months in district court case no. CR13-0219, *see* NRS 205.060(2); NRS 205.273(4), and 24-60 months in district court case no. CR13-0227, *see* NRS 205.226(2), fall within the parameters provided by the relevant statutes. Moreover, it is within the district court's discretion to impose consecutive sentences, *see* NRS 176.035(1), and/or grant a term of probation, *see* NRS 176A.100(1)(c). We also note that at the sentencing hearing, the district court addressed Toney and stated that the sentence imposed "is in response to your history, criminal history and the facts of this offense and not to your withdrawal from the [regimental discipline] program," and we are not persuaded by Toney's argument that the district court's "remaining comments indicate otherwise." We conclude that the district court did not abuse its discretion at sentencing.

Finally, we note there is a clerical error in one of the two judgments of conviction. The judgment of conviction entered in district court case no. CR13-0219 orders the sentence to run consecutively to the sentence imposed in district court case no. CR13-0227, while the judgment of conviction entered in CR13-0227 orders the sentence to run consecutively to the sentence imposed in CR13-0219. Our review of the sentencing hearing does not provide clarity: the district court ordered the sentence in CR13-0219 to run consecutively to the sentence in CR13-0227, however, after an off-the-record discussion, the prosecutor instructed the clerk of the court to note that the sentence in CR13-0227 was to run consecutively to the sentence in CR13-0219. Therefore, we direct the district court to correct the judgments of conviction to clarify how it intended the sentences to run. Accordingly, we

ORDER the judgments of conviction AFFIRMED and direct the district court to correct the judgments of conviction.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk