

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVER GEOVANY VIVAR, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63829

FILED

JUL 22 2014

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

ORDER OF AFFIRMANCE

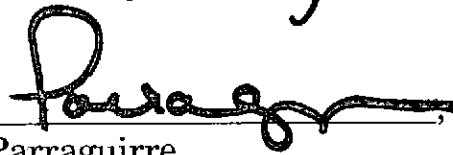
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Ever Geovany Vivar, Jr. contends that the district court abused its discretion at sentencing by focusing on his gang membership and not giving sufficient consideration to his mitigating evidence. We review a district court's sentencing determination for an abuse of discretion, *Parrish v. State*, 116 Nev. 982, 988-89, 12 P.3d 953, 957 (2000), and will refrain from interfering with the sentence imposed by the district court "[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). As Vivar admits, evidence of his gang affiliation may be relevant to show his future dangerousness to society. See *Lay v. State*, 110 Nev. 1189, 1196-97, 886 P.2d 448, 453 (1994). In this case, Vivar was captured on video repeatedly smashing a rock into a rival gang member's head. Thus, evidence of Vivar's gang affiliation is not impalpable or highly suspect. As to Vivar's mitigation evidence, he argues, without citing to any authority, that the

district court should be required to articulate whether it has considered that evidence in making its decision. Here, the district court did state that “the record should reflect the Court has received and reviewed” the mitigation evidence. Vivar has not demonstrated that the district court based its sentencing decision solely on his gang affiliation and that it did not sentence him as an individual by taking into consideration his mitigation evidence. We discern no abuse of discretion and we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Pickering

 _____, J.
Parraguirre

 _____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
David Kalo Neidert
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk