

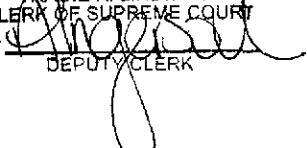
IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER EARL DAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63889

**FILED**

FEB 13 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence (DUI) after a prior felony conviction of DUI. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Walter Earl Day contends that the district court abused its discretion by failing to consider mitigating evidence and imposing a sentence greater than that recommended by the Division of Parole and Probation (P&P). We disagree.

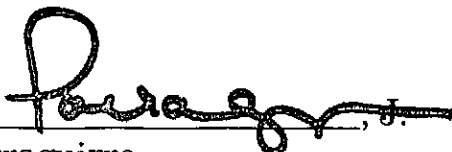
We review a district court's sentencing determination for an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). We have consistently afforded the district court wide discretion in its sentencing decision, *see, e.g., Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), 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). The district court may "consider a wide, largely unlimited variety of information to


insure that the punishment fits not only the crime, but also the individual defendant.” *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). Further, the court is not required to accept the recommendations of P&P. *See Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978).

The parties presented mitigating testimony that mirrored the contents in the presentence investigation report. The district court determined that Day’s long-term alcohol abuse, prior multiple DUIs, failure to learn from past mistakes, and potential danger to the public outweighed those mitigating factors and imposed a prison term of 48 to 120 months. Although higher than the recommended sentence, Day’s sentence is within the parameters provided by the relevant statute, *see* NRS 484C.410(1)(a), and the record does not demonstrate that the district court relied on impalpable or highly suspect evidence. We conclude that the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. James E. Wilson, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk