

IN THE SUPREME COURT OF THE STATE OF NEVADA

NELSON HANK GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64683

FILED

JUL 22 2014

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

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of attempted sexual assault and attempted lewdness with a child under the age of 14 years. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

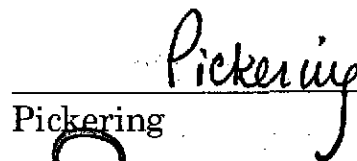
First, appellant Nelson Hank Gonzalez contends that the district court erred by considering his immigration status and imposing consecutive prison terms at his resentencing hearing. We disagree.

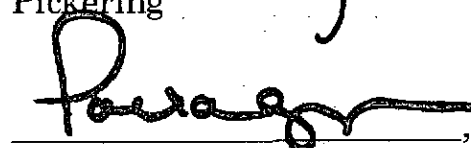
This court will not disturb a district court's sentencing determination absent an abuse of discretion. *See Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Gonzalez fails to demonstrate that the district court relied solely on impalpable or highly suspect evidence. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). In fact, a review of Gonzalez's resentencing hearing reveals that the district court based its sentencing decision on the facts of the instant case. Additionally, Gonzalez's two consecutive prison terms of 36-90 months fall within the parameters provided by the relevant statutes, see NRS 193.330(1)(a)(1); NRS 200.366(2); NRS 201.230(2), and it is within the district court's


discretion to impose consecutive sentences, *see* NRS 176.035(1). We conclude that the district court did not abuse its discretion at sentencing.

Second, Gonzalez contends that the district court erred by granting his habeas petition without conducting an evidentiary hearing. Gonzalez, however, is not an aggrieved party because the district court granted the relief he requested—a new sentencing hearing. *See generally* NRAP 3B; NRS 177.015. Moreover, any challenge to the district court's ruling on Gonzalez's habeas petition is independently appealable and not properly raised in an appeal from the amended judgment of conviction. *See* NRS 34.575(1).¹ Therefore, we lack jurisdiction to consider this claim. Accordingly, we

ORDER the amended judgment of conviction AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

¹As the State points out in its fast track response, it appears that the district court has not yet entered and filed a formal, written order granting Gonzalez's habeas petition.

cc: Hon. Douglas W. Herndon, District Judge
Potter Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk