

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM SCHULTZ A/K/A WILLIAM
ADAM SCHULZ
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66537

FILED

MAY 07 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of possession of a controlled substance with intent to sell, a category D felony. The court sentenced appellant William Schultz to serve 12 to 30 months in prison, with 200 days credit for time served. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Schultz raises two issues on appeal. First, Schultz argues the district court erred by finding that it did not have jurisdiction to order the Nevada Division of Parole and Probation (P&P) to amend the presentence investigation report (PSI). Second, Schultz argues the district court erred by not striking disputed information from the PSI.

FACTS

Schultz objected to language in his PSI indicating gang affiliation at his sentencing hearing. The court did not rule on the objection. Instead, the court continued the hearing for 30 days to allow Schultz time to resolve his objections with P&P directly. P&P did not amend the report.

Schultz renewed his objection to the gang affiliation information in the PSI at the next sentencing hearing. His counsel stated

he had obtained the police field interview cards (FI cards). The district court listened to Schultz's arguments in objection but did not examine the FI cards. Schultz asserted that he had no prior gang related convictions and had never admitted to being in a gang. One of the FI cards indicated that Schultz admitted to a police officer to being in a gang. Schultz argued in court that the officer who made the FI card mistakenly reported that Schultz, instead of his companion, stated that he was in a gang. The court again offered to continue sentencing for Schultz to resolve the matter with P&P. The court stated that if Schultz did not want to work out his objections with P&P, the court would move forward with sentencing. Schultz asked the court to proceed with sentencing, and the court sentenced Schultz. This appeal followed.

DISCUSSION

The first issue is whether the court lacked jurisdiction to amend the PSI. While the court did not explicitly state it lacked jurisdiction, it clearly refused to order P&P to amend the PSI.

Pursuant to *Sasser v. State*, 130 Nev. ___, ___, 324 P.3d 1221, 1226 (2014) the district court has the discretion to "amend the PSI itself, return it to P&P for amending, or amend [the PSI] in the judgment of conviction" if it finds that information in the PSI is inaccurate or based on impalpable or highly suspect evidence. Information is based on impalpable or highly suspect evidence when it is "essentially a bald assertion, unsupported by any evidence whatsoever." *Goodson v. State*, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982).

The court's apparent belief that it lacked authority to make or order corrections to the PSI was mistaken. The failure to amend the PSI was erroneous if the gang information was wrong, but the court never


made a determination. Nevertheless, if it was error, it was harmless error because it did not affect the proceedings. See NRS 178.598. Schultz received the minimum sentence as stipulated in the plea agreement.

Second, there is a factual basis in the record to support the gang affiliation identification in Schultz's PSI. Specifically, two of the three FI cards in the record reflect Schultz's gang affiliation. Even if the district court accepted Schultz's argument that the officer mistakenly reported that Schultz admitted to being in a gang, the record still contains evidence to support the gang affiliation identification from the other FI card.

Thus, we conclude the record provides a factual basis for the gang affiliation information in Schultz's PSI and the court was not required to strike all the information in the PSI. See *Sasser*, 130 Nev. at ___, 324 P.3d at 1226 (quoting *Stockmeier v. State, Bd. of Parole Com'rs*, 127 Nev. ___, ___, 255 P.3d 209, 213 (2011)) (A district court may "strike information that is based on 'impalpable or highly suspect evidence.'"). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk