

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY LAVELLE MAYS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66966

FILED

AUG 26 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of coercion. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant Gregory Mays claims the district court abused its discretion by sentencing him to a prison term of 28 to 72 months because the State had previously agreed to probation and the victim had recanted her allegations. Mays also argues the State failed to provide proper notice of allegations resulting in a new case, he did not have an opportunity to review the discovery and was unprepared to defend against the new case, and the district court did not disclaim any reliance upon the new allegations when making its sentencing decision.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). “[The district] court is privileged to consider facts and

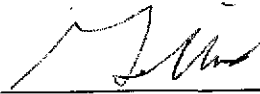
circumstances which clearly would not be admissible at trial." *Silks v. State*, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976). However, we "will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).


The record reveals the State agreed not to oppose probation and Mays agreed the State would regain the right to argue for any legal sentence if an independent magistrate confirmed probable cause against him for new criminal charges. During the time set for sentencing, the district court learned there were new criminal allegations against Mays and continued sentencing for 30 days so the allegations could play out and Mays could analyze the facts of this new case. At sentencing, Mays conceded the 48-hour-finding had been made and the State regained the right to argue, and Mays asked the district court not to consider the new allegations in making its sentencing determination. The district court stated that with Mays' criminal history of five prior felonies, four prison terms, a conviction for kidnapping, a conviction for attempted sexual assault, and the instant offense of coercion, it could not place Mays on probation, and it sentenced him to prison instead.

This record does not demonstrate Mays' due process rights were violated, the district court's sentencing determination was based on impalpable or highly suspect evidence, or the sentence exceeded the

parameters of the relevant statute—NRS 207.190(2). Accordingly, we conclude the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk