

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEWART JOSE OTERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67021

FILED

AUG 25 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary of an automobile with a prior conviction for burglary. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant Stewart Otero claims the district court abused its discretion at sentencing by relying on irrelevant information to impose the maximum sentence, a term of 48-120 months.

"A district court is vested with wide discretion regarding sentencing," and "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). However, "this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Id.*


Before imposing sentence, the court inquired whether Otero received a benefit from the negotiations in this matter. Defense counsel responded that Otero did not receive a benefit and he pleaded guilty to the original charge. The court then expressed some surprise that the Division of Parole and Probation and the State were still seeking the maximum sentence possible. The prosecutor responded by saying he believed there

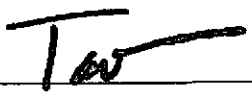
was a benefit because the State could have pursued habitual criminal adjudication against him. Thereafter, the court said it was satisfied and imposed the maximum term permitted, as requested by the State.

Otero claims that the court's reliance on the potential benefit identified by the State to impose the maximum sentence was improper. Otero points out there is nothing in the record to indicate that the State ever contemplated seeking habitual criminal adjudication or that the State negotiated away habitual criminal adjudication as part of the plea. The State agrees trial judges should be discouraged from asking the prosecutor to justify a bargained recommendation. The State argues, however, that no relief is warranted here because the information that the court obtained from the inquiry—that the State could have pursued habitual criminal adjudication—was information the court already had because the number and nature of Otero's prior convictions were identified in the presentence investigation report.

We agree with the State and we conclude that the record does not demonstrate that the district court relied on impalpable or highly suspect evidence when imposing the sentence. Additionally, the sentence imposed is within the parameters provided by the relevant statute. See NRS 205.060(2). Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk