

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO JAVIER ROSALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67200

FILED

JUL 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Williams*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of coercion. Seventh Judicial District Court, Eureka County; Gary Fairman, Judge.

Appellant Francisco Rosales argues the district court abused its discretion at sentencing by failing to consider mitigation evidence and by considering improper argument and evidence from the State regarding new charges. We disagree.

Rosales' prison sentence of 24 to 60 months falls within the parameters of the relevant statute. *See* NRS 207.190(2)(a). Rosales has not demonstrated the district court relied solely upon impalpable evidence, *see Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996), closed its mind to the presentation of all of the evidence, *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998), or refused to consider mitigating evidence, *see Wilson v. State*, 105 Nev. 110, 115, 771 P.2d 583, 586 (1989). Specifically, the district court stated it considered all of the mitigating evidence presented but determined Rosales should receive a prison term based on the violent nature of the crime. Further, the district court expressly declined to consider the State's argument and evidence


regarding new charges brought against Rosales. Accordingly, we conclude Rosales fails to demonstrate the district court abused its discretion at sentencing. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009).

Rosales also argues the State committed prosecutorial misconduct when it made arguments regarding Rosales' new charges. Rosales objected to this argument, so we review for harmless error and determine whether any improper conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). We conclude any error regarding the State's argument about Rosales' new charges was harmless, and does not warrant reversal, because the district court expressly stated it was not going to consider the new charges in making its sentencing decision.

Having considered Rosales' contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Gary Fairman, District Judge
State Public Defender/Ely
State Public Defender/Carson City
Attorney General/Carson City
Attorney General/Ely
Eureka County District Attorney
Eureka County Clerk