

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFREDO ORDEZ OLGUIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67544

**FILED**

**OCT 19 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, pursuant to a guilty plea, of attempted lewdness with a child under 14 and attempted sexual assault. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

First, appellant Alfredo Ordez Olguin argues the State committed prosecutorial misconduct during the sentencing hearing. Olguin argues the State committed misconduct by asserting there were two victims for these crimes and by arguing for lengthier terms by stating Olguin received a substantial bargain by entry of his plea and could have faced a significantly longer sentence had he lost at trial on the original charges. Olguin argues these statements were inflammatory, misstated the evidence, and contradicted the State's previous positions. Olguin did not object to these statements at the sentencing hearing, and thus, we review for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under the plain error standard, we determine "whether there was an error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

We have reviewed the prosecutor's statements and conclude they do not constitute error, let alone plain error. A sentencing "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), and Olguin does not demonstrate the State attempted to induce the court to sentence Olguin "under the influence of passion." *Holloway v State*, 116 Nev. 732, 742, 6 P.3d 987, 994 (2000).

Moreover, Olguin was charged with committing crimes against two victims and he admitted to committing those crimes by entry of his guilty plea. The State did not commit misconduct by stating this fact to the district court. Further, the State's argument regarding the potential sentence Olguin faced had he been convicted of the original charges at trial was also factually correct.

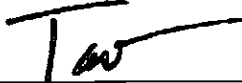
Further, the State retained the right to argue the appropriate sentence in the guilty plea agreement. Olguin fails to demonstrate prosecutorial misconduct for exercising that right. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476-77 (explaining the test for prosecutorial misconduct). Therefore, Olguin fails to demonstrate the State's arguments at the sentencing hearing amounted to plain error affecting his substantial rights.


Second, Olguin argues the district court abused its discretion when imposing sentence because it was based upon prejudice and passion against him. We review a district court's sentencing decision for abuse of discretion. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). 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). Our review of the record reveals the district court

did not base its sentencing decision on impalpable or highly suspect evidence. The district court considered the State's arguments, Olguin's arguments in mitigation, and concluded consecutive terms of four to ten years were appropriate. In addition, Olguin's sentences fall within the parameters of the relevant statutes. See NRS 193.330(1)(a)(1); NRS 200.366(2); NRS 201.230(2). We therefore conclude Olguin does not demonstrate the district court abused its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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