

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS RAY KERSHNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67866

FILED

DEC 18 2015

TOMMIE K. LINDEMAN
CLERK OF THE SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence of intoxicating liquor. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.


Appellant Thomas Ray Kershner argues the district court abused its discretion by rejecting Kershner's application for the treatment program for alcohol and drug abuse pursuant to NRS 484C.340. Kershner argues a district court may not lawfully deny an application for such treatment due to the defendant's criminal history and concern for public safety stemming from the nature of Kershner's offense. Kershner's argument lacks merit.


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). 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). 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). "Possession of the fullest information possible concerning a

defendant's life and characteristics is essential to the sentencing judge's task of determining the type and extent of punishment." *Id.*

NRS 484C.340(3) plainly permits the district court to consider "any relevant evidence" regarding placement of a defendant in the treatment program. As Kershner's criminal history and the dangerousness of his actions during the commission of this crime are relevant to the district court's decision in this matter, *see Denson*, 112 Nev. at 492, 915 P.2d at 286, the district court properly considered this information when imposing Kershner's sentence. We further note Kershner's sentence fell within the relevant statute. *See* NRS 484C.400(1)(c). Therefore, Kershner fails to demonstrate the district court abused its discretion when rejecting his application for a treatment program pursuant to NRS 484C.340. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk