

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID JAMIL DEWS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67789

FILED

DEC 18 2015

TRAVIS K. LINDEMAN  
CLERK OF THE COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of a controlled substance for the purpose of sale. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

The district court initially ordered appellant David Jamil Dews to complete a program of regimental discipline. Dews did not complete the program due to a disciplinary violation and the district court conducted a new sentencing hearing. At that hearing Dews challenged the decision to remove him from the regimental discipline program and requested placement in drug court or probation rather than a prison sentence. The district court concluded a prison term was appropriate and sentenced Dews to serve 19 to 48 months in prison.

Dews first argues the district court abused its discretion at sentencing. Dews argues the district court improperly believed the State was against Dews' prior admission into the regimental discipline program, the district court improperly considered the discharge letter from that program, and the district court considered unsupported speculation about Dews' conduct in the program.

15-901616

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).


Our review of the record reveals the district court did not base its sentencing decision on impalpable or highly suspect evidence. The district court heard a lengthy discussion and testimony regarding Dews' conduct in the regimental discipline program. We note the district court incorrectly stated the State had opposed Dews' placement in the regimental discipline program. However, the district court concluded it would not reconsider the Nevada Department of Corrections' (NDOC) decision to remove Dews from that program. The district court then considered Dews' criminal record and his conduct that resulted in the instant conviction when imposing sentence. We note Dews' sentence of 19 to 48 months in prison falls within the parameters of the relevant statutes. *See* NRS 193.130(2)(d); NRS 453.337(2)(a). We conclude Dews fails to demonstrate the district court abused its discretion at sentencing.

Second, Dews argues the State improperly withheld exculpatory evidence related to his removal from the regimental discipline program in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), NRS 174.235, and NRS 174.295. Dews fails to demonstrate the State withheld evidence relating to Dews' behavior in the regimental discipline program.

The record reveals Dews possessed evidence related to his removal from the program because Dews called a witness to testify at the sentencing hearing regarding his removal. That witness testified he was solely responsible for the violation that caused Dews to be removed from the regimental discipline program. Moreover, Dews fails to demonstrate that evidence related to his removal from the program would not have been available to him through diligent investigation by the defense because the letter explaining his removal from that program provides a telephone number to contact if any further information regarding Dews' removal was required. *See State v. Huebler*, 128 Nev. \_\_\_, \_\_\_ n.11, 275 P.3d 91, 100 n.11 (2012) (citing *Steese v. State*, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998)). Further, even assuming there was additional information that could have been produced, Dews fails to demonstrate a reasonable probability of a different outcome had he presented it at the sentencing hearing because the district court specifically declined to reconsider the NDOC's decision to remove Dews from the program. *See NRS 174.295(2); State v. Bennett*, 119 Nev. 589, 599-600, 81 P.3d 1, 8 (2003). Therefore, Dews is not entitled to relief for this claim.

Having concluded Dews is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. David A. Hardy, District Judge  
Law Office of Thomas L. Qualls, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk