

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMIRO RODRIGUEZ-CARRILLO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68729

FILED

FEB 17 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of attempted lewdness with a minor under the age of 14 and attempted sexual assault. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Ramiro Rodriguez-Carrillo claims the district court abused its discretion at sentencing and violated his right to due process because it punished him based on prior uncharged crimes. Specifically, Rodriguez-Carrillo claims the district court erred because it considered the fact the victim had told investigators Rodriguez-Carrillo had sexually assaulted her one to two times a week for three years. And because Rodriguez-Carrillo pleaded guilty to attempted lewdness with a minor and attempted sexual assault, consideration of the unpursued or uncharged conduct was improper under *Denson v. State*, 112 Nev. 489, 915 P.2d 284 (1996).

Rodriguez-Carrillo failed to object to the district court's consideration of the sexual assault argument, and therefore, this court reviews for plain error. See *Grey v. State*, 124 Nev. 110, 123, 178 P.3d 154, 163 (2008) (observing that unpreserved errors at sentencing are reviewed

for plain error). Rodriguez-Carrillo fails to demonstrate plain error because he fails to demonstrate his substantial rights were affected.

The district court has wide discretion in its sentencing decision. See *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

The holding in *Denson* does not apply in the instant case. 112 Nev. at 494, 915 P.2d at 287. In *Denson*, the district court judge stated at sentencing that every time Denson entered a casino he did so with the intent to steal. *Id.* at 493, 915 P.2d at 287. The judge further stated Denson was “going to pay for it now” and, after imposing sentence, the judge told Denson he would serve his sentences “consecutively because it is ‘for every time you have done it [committed burglary].’” *Id.* Because Denson had only been investigated or charged with a handful of burglaries at casinos, the Nevada Supreme Court concluded the district court improperly intended to punish Denson for uncharged crimes and reversed the sentence. *Id.* at 494, 915 P.2d at 287.


In the instant case, the sexual assaults that occurred over the three years were the basis of the plea and were left uncharged or dismissed in the wake of Rodriguez-Carrillo’s plea. Rodriguez-Carrillo agreed in the plea agreement the district court could consider “any counts which are to be dismissed and any other cases charged or uncharged which are either to be dismissed or not pursued by the State.” Because Rodriguez-Carrillo agreed the sexual assaults could be considered, it was

proper for the district court to consider the uncharged or dismissed counts of sexual assault. We conclude the district court did not abuse its discretion at sentencing and did not violate Rodriguez-Carrillo's right to due process by considering the underlying facts of the crime when imposing sentence.<sup>1</sup> Accordingly, we

Having concluded Rodriguez-Carrillo is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Patrick Flanagan, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>1</sup>We also note the sentence imposed, two consecutive terms of 60 to 150 months in prison, is within the parameters provided by the relevant statutes, *see* NRS 193.330(1)(a)(1); NRS 200.366(2)(b); NRS 201.230(2).