

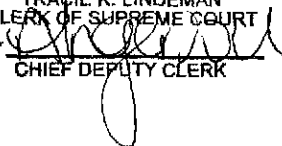
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON MARK ESPINOSA A/K/A J
ESPINOSA A/K/A JASON MAR
ESPANOSA A/K/A JAY ESPINOSA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68084

FILED

FEB 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Appellant Jason Mark Espinosa first argues the district court abused its discretion in choosing to sentence him to a prison term rather than to a term of probation and did not consider placing him in a drug rehabilitation program. 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).

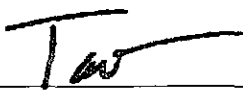
Our review of the record reveals the district court did not base its sentencing decision on impalpable or highly suspect evidence. The record reveals Espinosa had three felony convictions prior to the commission of the instant crime and he had previously failed to complete

the drug court program due to a subsequent prison incarceration. During the sentencing hearing, the parties informed the district court that the drug court program would not accept Espinosa for this matter due to his prior failure to complete that program. Further, given Espinosa's criminal record, it was within the district court's discretion to decide not to grant Espinosa probation. See NRS 176A.100(1)(b). In addition, Espinosa's sentence of 12 to 30 months in prison falls within range of the relevant statutes. See NRS 193.130(e); NRS 453.336(2)(a). Therefore, Espinosa fails to demonstrate the district court abused its discretion when imposing Espinosa's sentence.

Second, Espinosa asserts the district court improperly considered and raised questions regarding his arrest for an unrelated matter. Espinosa did not object during the sentencing hearing and thus, no relief would be warranted absent a demonstration of plain error. See *Dieudonne v. State*, 127 Nev. 1, 4, 245 P.3d 1202, 1204-05 (2011). "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." *Denson*, 112 Nev. at 492, 915 P.2d at 286. Under the facts in this case, Espinosa fails to demonstrate consideration of his recent arrest was improper. Therefore, Espinosa fails to demonstrate plain error affecting his substantial rights. See *Dieudonne*, 127 Nev. at 4, 245 P.3d at 1204-05. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Nancy L. Porter, District Judge
Brian D. Green
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk