

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD LEE SORTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69022

FILED

APR 20 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of lewdness with a child under 14. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant Richard Lee Sorter argues the district court abused its discretion at sentencing by considering the timing of Sorter's guilty plea. Sorter entered his guilty plea a short time before his trial was scheduled to begin, and Sorter asserts the district court's consideration of the timing of his guilty plea improperly punished him for initially exercising his right to a trial.

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). "It is well established that a sentencing court may not punish a defendant for exercising his constitutional rights and that vindictiveness must play no part in the sentencing of a defendant." *Mitchell v. State*, 114 Nev. 1417, 1428, 971 P.2d 813, 820 (1998), *overruled on other grounds by Sharma v. State*, 118 Nev. 648, 655, 56 P.3d 868, 872 (2002) and *Rosky v. State*, 121 Nev. 184, 190 111 P.3d 690, 693 (2005). "The defendant has the burden to provide evidence that the district court sentenced him vindictively." *Id.*

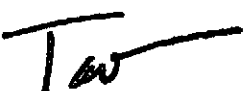
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Our review of the record demonstrates the district court did not abuse its discretion. The victim-impact testimony revealed the victims suffered long-term sexual abuse and were traumatized by having to repeat their stories multiple times as the trial neared. See NRS 176.015(b)(4). The district court noted Sorter decided to enter his guilty plea as the parties were preparing for trial and the preparation for the trial had a significant impact on the victims. The court then sentenced Sorter to serve two consecutive terms of life with the possibility of parole in 10 years, which was within the parameters of the relevant statutes. See NRS 176.035(1); NRS 201.230(2).

We conclude it was proper for the district court to consider the victim-impact testimony and Sorter fails to demonstrate the district court punished him for the exercise of his rights. Therefore, Sorter fails to demonstrate the district court abused its discretion at sentencing. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (stating “[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, this court will refrain from interfering with the sentence imposed.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Scott N. Freeman, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk