

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK NEMCEK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68919

FILED

MAY 09 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted sexual assault and luring children or mentally ill persons with use of technology with the intent to engage in sexual conduct. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

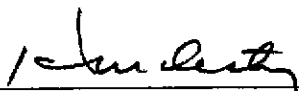
Appellant contends that the district court abused its discretion by declining to place him on probation as recommended by the Division of Parole and Probation. He specifically contends that the district court arbitrarily ignored the statutorily mandated psychosexual evaluation in determining sentencing. We disagree.

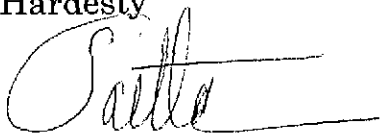
We review a district court's sentencing decision for an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Appellant's sentence is within the statutory limits, see NRS 200.366(3)(b); NRS 193.330(a)(1); NRS 201.560(4)(a), and it is within the district court's discretion to impose a sentence different from that recommended by the Division, *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). Further, while the district court questioned the usefulness of psychosexual evaluations, the court specifically said it had reviewed the psychosexual

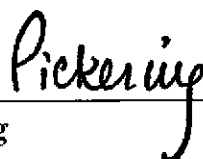
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evaluation in this case and found it unpersuasive considering the nature of the crime itself, the threat to the community, and appellant's lack of success with previous counseling. *See Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (explaining that this court will refrain from interfering with the sentence imposed "[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"); *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (providing that the sentencing judge has discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant"). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Saitta


_____, J.
Pickering

cc: Hon. Eric Johnson, District Judge
Turco & Draskovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk