

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD ARTHUR EVANS, IV,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69607

**FILED**

JUN 22 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a no contest plea, of attempt to commit lewdness with a child under the age of 14. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Appellant Donald Arthur Evans, IV, claims the district court abused its discretion at sentencing by rejecting the Division of Parole and Probation's recommendation for probation and imposing the maximum sentence possible. He also asserts the district court abused its discretion and violated his Fifth Amendment rights by imposing sentence based on his entry of a no contest plea and his perceived failure to take responsibility for the crime.

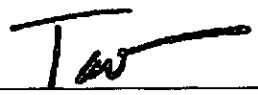
The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court "[s]o long as the record does not demonstrate prejudice resulting from consideration of information 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 imposition of a harsher

sentence due to a defendant's refusal to admit guilt violates a defendant's Fifth Amendment rights and constitutes an abuse of discretion. *Brown v. State*, 113 Nev. 275, 291, 934 P.2d 235, 245 (1997).

Although Evans' sentence of 96-240 months is the maximum possible sentence, it is within the parameters provided by the relevant statutes. See NRS 193.330(1)(a)(1); NRS 201.230(2). The record demonstrates the district court did not rely on palpable or highly suspect evidence when imposing the sentence. And the record belies Evans' claim the district court relied on his failure to take responsibility for the crime when imposing sentence. The district court judge stated he had reviewed the psychosexual evaluation and found Evans was eligible for probation. The judge explained, however, that even though Evans was eligible for probation, given the vulnerability of the child victims, probation was not appropriate. The granting of probation was discretionary, see NRS 176A.100(1)(c), and the district court was not required to follow the recommendation of the Division of Parole and Probation, see *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). We conclude the district court did not abuse its discretion or violate Evans' Fifth Amendment rights when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Thomas L. Stockard, District Judge  
The Law Office of Jacob N. Sommer  
Attorney General/Carson City  
Churchill County District Attorney/Fallon  
Churchill County Clerk