

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN EARL BROX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69944

FILED

SEP 21 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 guilty plea, of burglary, offering false instrument for filing or record, forgery, and conspiracy to commit a crime. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Steven Earl Brox first argues the district court abused its discretion by sentencing him to serve a greater penalty than one of his codefendants. Brox asserts his codefendant committed more wrong actions during the commission of these crimes, the shorter sentence the codefendant received created an appearance of improper favoritism towards the codefendant, and the district court did not explain the disparity in sentences.

We review a district court's sentencing decision for abuse of discretion. *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 Nevada Supreme Court has stated "sentencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms." *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 391, 390 (1990). We note that the codefendants were not sentenced at the same hearing and the codefendant was sentenced at a later date. At no time during the sentencing hearing in this matter did the district court discuss the sentence Brox's codefendant would receive or imply that Brox was given a lengthier sentence due to improper favoritism towards the codefendant.

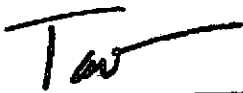
Here, the district court noted there were many women involved in this matter who were victimized due to Brox's greed. The district court then imposed terms totaling 24 to 60 months in prison, which was within the parameters of the relevant statutes. *See* NRS 176.035(1); NRS 193.130(c), (d); NRS 199.480(3); NRS 205.060(2); NRS 205.090; NRS 205.095; NRS 239.330. Accordingly, we conclude Brox fails to demonstrate the district court abused its discretion when imposing his sentence.

Second, Brox argues the district court abused its discretion by declining to follow the recommendation contained in the presentence investigation report (PSI) recommending Brox serve a term of probation. As stated previously, Brox fails to demonstrate the district court based its sentencing decision on impalpable or highly suspect evidence and the sentence imposed was within the parameters of the relevant statutes. *Denson*, 112 Nev. at 492, 915 P.2d at 286. The decision to decline to impose a term of probation was within the district court's discretion, *see*

NRS 176A.100(1)(c), and Brox fails to demonstrate the district court's exercise of its discretion was improper. We also note the district court is not required to follow the sentencing recommendation of the Division of Parole and Probation. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972) ("A trial court does not abuse its discretion by imposing a sentence in excess of that suggested by the [Division]"). Therefore, we conclude Brox fails to demonstrate the district court abused its discretion when imposing sentence.

Having concluded Brox is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao

cc: Hon. Jessie Elizabeth Walsh, District Judge
Law Office of Lisa Rasmussen
Turco & Draskovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk