

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JOHN STEWART,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69415

FILED

NOV 02 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of driving under the influence causing substantial bodily harm. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant Robert John Stewart contends that the Division of Parole and Probation (the Division) made errors in the Probation Success Probability form and Sentence Recommendation Selection Scale form that caused the Division to make an upward departure in its sentencing recommendation in the Presentence Investigation Report (PSI). As a result, Stewart argues, the Division's recommendation was tainted, and the district court abused its discretion in sentencing him.

This court reviews a district court's decision regarding the admissibility of evidence during a sentencing hearing for an abuse of discretion. *Sherman v. State*, 114 Nev. 998, 1012, 965 P.2d 903, 913 (1998). "[A]n abuse of discretion will be found when the defendant's sentence is prejudiced from consideration of information or accusations founded on impalpable or highly suspect evidence." *Goodson v. State*, 98 Nev. 493, 495-96, 654 P.2d 1006, 1007 (1982). Thus, even when a

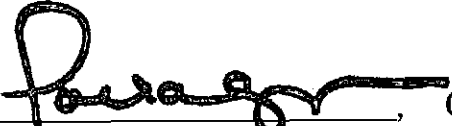
116-34140

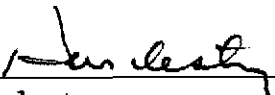
sentencing form constitutes impalpable or highly suspect evidence, we will not find an abuse of discretion unless the defendant's sentence was prejudiced. *See Blankenship v. State*, 132 Nev., Adv. Op. 50, 375 P.3d 407, 412 (2016).

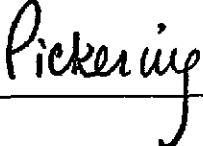
While the district court recognized substantial errors in the sentencing forms, the court articulated justifications for the sentence it imposed independent of the Division's sentencing departure in the PSI, and sentenced Stewart to a lower range than the PSI recommendation. Thus, Stewart's sentence was not prejudiced because the district court did not rely on impalpable or highly suspect evidence during the sentencing hearing. For this reason, we conclude that the district court did not abuse its sentencing discretion.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David A. Hardy, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk