

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HOWARD ANTHONY GLOYD, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70380

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Howard Anthony Gloyd, Jr., appeals from a judgment of conviction, pursuant to a guilty plea, of attempted battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Gloyd argues the district court abused its discretion by sentencing him based upon an erroneous recommendation in the presentence investigation report (PSI). Gloyd argues the probation success probability (PSP) score improperly deducted points for use of a weapon in the commission of the crime when he did not actually use a weapon. Given the error, Gloyd asserts the score erroneously recommended a denial of probation rather than placing him in the borderline category. Gloyd also asserts this error resulted in a lengthier prison term than was actually warranted.

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]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." *Blankenship v. State*, 132 Nev.

___, ___, 375 P.3d 407, 412 (2016) (internal quotation marks omitted). “So 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.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


During the sentencing hearing, both parties acknowledged that the PSP had incorrectly deducted points from the score because no weapon had been used in the commission of this crime. As a result of this error, Gloyd’s PSP score was improperly lowered and he should have been placed into the borderline for probation category. Accordingly, this error constituted impalpable or highly suspect evidence. *See Blankenship*, 132 Nev. at ___, 375 P.3d at 413 (explaining only an error in the PSP or PSI that “taints the PSI sentencing recommendation considered by the district court” amounts to impalpable or highly suspect evidence).


However, Gloyd cannot demonstrate prejudice stemming from the incorrect PSP score because the record reveals the district court specifically declined to rely upon that score or the PSI sentencing recommendation when imposing sentence. As stated previously, the parties acknowledged the error during the sentencing hearing. The district court then explained it did not rely upon the recommendation contained in the PSI, stating “I believe counsel’s recommendation is more powerful than any division’s mathematical formula.” Regarding the PSI recommendation, the district court further stated, “whether they did it incorrectly or not is irrelevant to me because I’m going to sentence [Gloyd] to what I think is fair within the legal limit based on my job as a district court judge and nothing more than that.”




The district court then stated it imposed sentence based upon "the seriousness of the offense," which constituted an act of violence that resulted in a severe injury to the victim. The district court concluded probation was not appropriate, which was within the district court's discretion. See NRS 176A.100(1)(c). The district court sentenced Gloyd to serve a term of 19 to 48 months in prison, which was within the parameters of the relevant statutes. See NRS 193.130(2)(d); NRS 193.330(1)(a)(4); NRS 200.481(2)(b). Therefore, we conclude Gloyd fails to demonstrate the district court abused its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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