

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN DONALD WOLLNICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71565

FILED

MAY 24 2017

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

ORDER OF AFFIRMANCE

Steven Donald Wollnick appeals from a judgment of a conviction entered pursuant to a guilty plea. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Wollnick pleaded guilty to violating an extended protection order. The victim was present at the sentencing hearing but did not testify. Wollnick was given the victim's impact statement prior to the sentencing hearing. The district court was provided a copy of this statement during the hearing and reviewed it in open court. Thereafter, a victim advocate read aloud the victim's impact statement, describing several specific instances of prior bad acts. Wollnick failed to object to the court receiving the victim's impact statement in open court or to the victim advocate reading the victim's statement in court. The district court sentenced Wollnick to 24-60 months in prison.¹

On appeal, Wollnick argues the decision should be reversed and remanded because the district court erroneously allowed the victim advocate to read the victim impact statement and, thereafter, relied upon the statement in sentencing Wollnick to prison, which he contends was not

¹We do not recount the facts except as necessary to our disposition.

the parties' intent. Wollnick relies upon *Buschauer v. State*, 106 Nev. 890, 804 P.2d 1046 (1990) and *Dieudonne v. State*, 127 Nev. 1, 245 P.3d 1202 (2011) to argue that allowing the victim advocate to read the victim's statement in open court was improper and prejudicial.


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). When the appellant fails to object to the alleged error below, we review for plain error, *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003), and under this standard any error in admitting a victim impact statement is not reversible unless the defendant shows the error was prejudicial and affected the defendant's substantial rights. *Dieudonne*, 127 Nev. at 9, 245 P.3d at 1207.


Here, Wollnick was provided with the victim's impact statement and could have objected to its contents during the sentencing proceeding but failed to do so. Wollnick also failed to object when the district court was given the victim's impact statement during sentencing and took the liberty to read the victim's impact statement in open court before the victim advocate addressed the court. We therefore review for plain error. See *Green*, 119 Nev. at 545, 80 P.3d at 95; NRS 178.602.

Our review of the record demonstrates Wollnick's sentence of 24-60 months in prison is within the parameters provided by the relevant statutes, see NRS 200.591(5)(b); NRS 193.130(2)(c), and Wollnick does not allege that those statutes are unconstitutional. Moreover, the record

believes Wollnick's assertion that the victim's impact statement alone drove the district court's decision to sentence him to prison instead of probation. See *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (we "will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence"). We further note NRS 176.015 expressly allows victims to appear by personal representative, and states the court may "consider any reliable and relevant evidence at the time of sentencing." Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk