

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STACY ELYSE CLAPP,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71083

FILED

MAY 24 2017

EMERETTA S. BYRNE  
CLERK OF SUPERIOR COURT  
BY: *M. Wilcap*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Stacy Elyse Clapp appeals from a judgment of conviction, pursuant to a guilty plea, of obtaining and using personal identification information of another. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Pursuant to an agreement with the State, Clapp pled guilty to obtaining and using the personal identification information of another in violation of NRS 205.463(1). Under that agreement, the State would not oppose probation at sentencing. However, the agreement stated that if Clapp failed to appear "at any subsequent hearings in this case," the State was permitted "to argue for any legal sentence and term of confinement allowable[.]" After pleading guilty pursuant to this agreement, Clapp failed to appear at a sentencing hearing. Later at sentencing, the district court allowed the State to argue in favor of prison and ultimately sentenced Clapp to 28-80 months in prison.<sup>1</sup> On appeal, Clapp contends that: (1) the State should not have been allowed to argue at sentencing because she did not violate the plea agreement, and (2) the district court

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

abused its discretion by relying on federal sentencing guidelines when determining her sentence. We disagree and affirm the judgment of conviction.

When the State enters into a plea agreement, it "is held to 'the most meticulous standards of both promise and performance.'" *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting *Kluttz v. Warden*, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)). However, when a defendant violates a failure to appear clause, the State is released "from its obligation to make no sentencing recommendation." See *Sparks v. State*, 121 Nev. 107, 109-10, 110 P.3d 486, 487-88 (2005).

Here, Clapp concedes that she failed to appear at a subsequent hearing, but argues that this court should excuse her failure because: (1) the plea agreement did not specify that she was required to appear at the initial sentencing hearing, and (2) she attempted to reschedule the sentencing hearing. These arguments are without merit as the plea agreement stated that if Clapp failed to appear at "any subsequent hearings[,] the State would be allowed to argue at sentencing. (Emphasis added.) Therefore, Clapp's failure to attend a subsequent hearing released the State from its obligation to not argue against probation. See *Sparks*, 121 Nev. at 110, 110 P.3d at 487-88. Thus, we conclude that the State did not breach the plea agreement by arguing for prison.


At sentencing "[t]he [] judge is accorded wide discretion in imposing a sentence; absent an abuse of discretion, this court will not disturb the district court's determination on appeal." *Martinez v. State*, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998). Further, such discretion allows the district court "to consider a wide, largely unlimited variety of

information to insure that the punishment fits not only the crime, but also the individual defendant.” *Id.* at 738, 961 P.2d at 145. “This court will refrain from interfering with the sentence imposed ‘[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.’” *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009) (alteration in original) (quoting *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1191 (1976)).

Our review of the record reveals that Clapp’s sentence is within the statutory limits and is significantly less than that recommended by the State. *See* NRS 205.463(1) (providing a maximum sentence of 20 years in prison). And, we note that nothing suggests the district court considered suspect evidence or evidence unsupported by facts. Instead, the record reveals the district court was motivated by the seriousness of the charge and the substantial impact the crime had on the victim. As the district court articulated justifications for the sentence imposed and these justifications did not rely upon “impalpable or highly suspect evidence[,]” we conclude the district court did not abuse its discretion during sentencing. *See Silks*, 92 Nev. at 94, 545 P.2d at 1191. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Eric Johnson, District Judge  
Law Office of Monique A. McNeill  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk