

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN WESLEY GENTRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72155

**FILED**

SEP 13 2017

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

*ORDER OF AFFIRMANCE*

Shawn Wesley Gentry appeals from a judgment of conviction, pursuant to a guilty plea, of three counts of child abuse or neglect resulting in substantial bodily harm. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.


Gentry first contends the State breached the guilty plea agreement. We hold “the state to the most meticulous standards of both promise and performance in fulfillment of its part of a plea bargain” and will reverse for a violation of either. *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) (internal quotation marks omitted). The State agreed not to oppose Gentry’s request to run the sentence on count three concurrent to the other sentences so long as an NRS 176A.110 examination did not conclude Gentry was a high risk to reoffend, and the report did in fact state he was not a high risk to reoffend. Gentry argues the State explicitly breached the agreement by urging the court to impose the count-three sentence to run consecutively to the other sentences and implicitly breached it by undermining the risk assessment. We disagree.


Although the prosecutor said he was asking for "Count Three to be imposed consecutively," he prefaced it by stating he was asking "by the terms of the negotiations," and once brought to his attention, he acknowledged he misspoke as he believed he had said "concurrently." Nevertheless, the district court clarified and stated it understood the prosecutor was asking count three's sentence run concurrent to the others. Further, the State did not implicitly advocate for consecutive sentences by questioning the reliability of the examination. The primary purpose of the examination was to determine whether the State could argue for a consecutive sentence for count three. Beyond that, nothing in the plea agreement precluded the State from using the examination in whatever manner it deemed appropriate to argue for its desired outcome. We therefore conclude the State did not breach its plea agreement with Gentry.

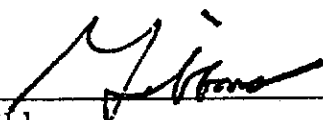
Gentry next contends the district court abused its discretion by failing to "disclaim any reliance" on either the State's inadvertent reference to a consecutive sentence for count three or its argument regarding the reliability of the examination. The district court has wide discretion in its sentencing 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). The district court stated it understood the State was not opposing a concurrent sentence for count three, and Gentry does not allege the State's

observations regarding the examination constituted, or were based on, impalpable or highly suspect evidence. We therefore conclude Gentry has not demonstrated the district court abused its discretion, and we

ORDER the judgment of conviction 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