

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELIJAH JACOBS HENDERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71797

**FILED**

SEP 13 2017

ELIZARETH A. BROWN  
CLERK OF SUPREME COURT  
BY: S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Elijah Jacobs Henderson appeals from a judgment of conviction entered pursuant to a guilty plea of voluntary manslaughter and failure to stop on the signal of a police officer. First Judicial District Court, Storey County; James E. Wilson, Judge.

Henderson claims the district court abused its discretion by failing to provide prior notice of its intent to consider an original probable cause affidavit at sentencing. Henderson argues the district courts should be required to provide prior notice of the information they will consider at sentencing so an appellant will have adequate opportunity to prepare a meaningful response. Henderson invites this court to adopt the federal jurisprudence requiring such notice.

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). "Few limitations are imposed on a judge's right to consider evidence in imposing a sentence, and courts are generally free to consider information extraneous to the presentencing report." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). "Further, a sentencing proceeding is not a second trial, and the court is privileged to consider facts and circumstances that

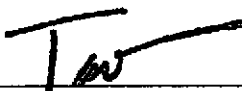
would not be admissible at trial.” *Id.* However, we “will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence.” *Id.*

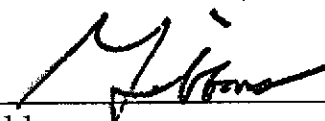
Prior to imposing the sentence, the district court commented on the contents of a probable cause affidavit. Henderson objected on grounds he did not receive the affidavit, it was different from the synopsis provided in the presentence investigation report (PSI), and police reports are generally inadmissible because they are too prejudicial. The district court determined Henderson was objecting on evidentiary grounds, and stated it would base its comments on the PSI synopsis instead. The district court determined probation was not appropriate in this case and sentenced Henderson to concurrent terms amounting to 36 to 120 months in prison.

We conclude Henderson has not demonstrated the district court relied upon impalpable or highly suspect information and his sentence falls within the parameters of the relevant statutes. *See* NRS 200.080; NRS 484B.550(3)(b). We consider Henderson’s lack-of-notice claim disingenuous because the probable cause affidavit was included with the police reports he received during discovery and it was among the documents cited in the evaluations and the mitigation report he submitted to the district court prior to sentencing. We decline Henderson’s invitation to adopt a rule requiring the district courts to provide presentencing notice of the documents they will be considering at sentencing. And we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. James E. Wilson, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Storey County District Attorney  
Storey County Clerk