

IN THE SUPREME COURT OF THE STATE OF NEVADA

JORGE TRUJILLO A/K/A ARMONDO PONCHO
RAMIREZ,

No. 36621

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 30 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive prison terms of 90-240 months. Appellant was given credit for 330 days time served.

Appellant contends that his Fifth and Fourteenth Amendment due process rights were violated at sentencing by (1) the presence of 15-20 uniformed police officers in the audience; and (2) the district court's consideration of evidence that the victim was a police officer as an aggravating factor in sentencing. Appellant argues that he was prejudiced by the violation of his due process rights thus resulting in an upward departure from the sentencing recommendation of the Division of Parole and Probation.

This court has consistently afforded the district court wide discretion in its sentencing decision,¹ and 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

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

supported only by impalpable or highly suspect evidence."² Moreover, "a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional."³

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. The district court expressly addressed the presence of the officers in the courtroom by stating, "[t]he Court is uninfluenced by the spectators in the courtroom and where they sit . . . I will not exclude anyone from the hearing unless there is a legal basis within which to close the hearing. And I don't find a legal basis to do so." The district court judge offered to recuse herself from sentencing yet appellant declined the offer. Additionally, the district court did not enhance appellant's sentence based on the fact that the victim was a police officer, but rather sentenced appellant after a consideration of all of the facts of the crime.⁴ We further note that the sentence imposed was within the parameters

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

³Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995) (citing Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978)).

⁴See Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) ("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."); see also Randell v. State, 109 Nev. 5, 7, 846 P.2d 278, 280 (1993) ("[J]udges spend much of their professional lives separating the wheat from the chaff" (quoting People v. Mockel, 276 Cal.Rptr. 559, 563 (Ct.App. 1990))). Furthermore, the district court is not bound by the recommendation of the Division of Parole and Probation. See Etcheverry v. State, 107 Nev. 782, 786, 821 P.2d 350, 352 (1991).

provided by the relevant statutes.⁵ We therefore conclude that appellant failed to demonstrate that he was prejudiced at sentencing, and that appellant's contentions are without merit.

Accordingly, we affirm the judgment of conviction.

It is so ORDERED.

Young, J.
Young
Rose, J.
Rose
Becker, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Jack A. Alian
Washoe County Clerk

⁵See NRS 193.330; NRS 193.165; NRS 200.030.