

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAVIER AGUILAR-ESPARZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73145

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Javier Aguilar-Esparza appeals from a judgment of conviction entered pursuant to a guilty plea of attempted lewdness on a child under the age of 14 years and open or gross lewdness. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Aguilar-Esparza claims the district court abused its discretion by sentencing him to the maximum sentence for his felony count and a consecutive sentence for his gross misdemeanor count without properly weighing the mitigation evidence. Aguilar-Esparza specifically asserts the psychologist's "guarded treatment prognosis" should have been weighed against the psychologist's less-than-a-high-risk-to-reoffend determination and the district court's observation that he had not expressed remorse should have been weighed against the psychologist's finding that "he externalized blame for his actions and minimized those actions."


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). Aguilar-Esparza's 96- to 240-month prison term and 364-day jail term fall within the parameters of the relevant statutes. See NRS 193.140; NRS 193.330(1)(a)(1); NRS 201.210(1)(a); NRS 201.230(2). Aguilar-Esparza has not alleged the district court relied solely on impalpable or highly suspect


evidence. *See Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively. *Pitmon v. State*, 131 Nev. 123, 129, 352 P.3d 655, 659 (Ct. App. 2015).

Moreover, the record demonstrates the district court considered the parties' sentencing recommendations, Aguilar-Esparza's allocution, the letters submitted by Aguilar-Esparza's family members, the psychologist's psychosexual evaluation and risk assessment, and the Division of Parole and Probation's presentence investigation report. The district court expressed concern over Aguilar-Esparza's "guarded" treatment prognosis, observed that his family had been devastated by his predatory conduct, and stated it did "not hear remorse." Based on this record, we conclude the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Lynne K. Simons, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk