IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN JAMES BARRAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74288

ORDER OF AFFIRMANCE

Dustin James Barral appeals from a judgment of conviction entered pursuant to an *Alford*[1] plea of attempted sexual assault of a minor under the age of 14 and child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, Barral argues the district court abused its discretion at sentencing. Barral asserts the victim's grandfather improperly testified during the sentencing hearing concerning the recidivism rates of sex offenders and the district court based Barral's sentence upon this testimony. 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). 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).

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

18-902238

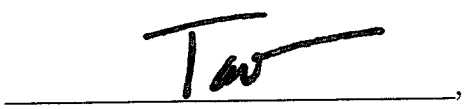
The record reveals the district court listened to the arguments of both parties and heard the victim impact statements. The victim's grandfather discussed the impact the crime had on his granddaughter, who was four-years old when the crime occurred. The grandfather further stated he had read that the recidivism rate for sexual offenders is between 5 and 24 percent. Following the parties' arguments and the victim impact testimony, the district court concluded an aggregate sentence of 124 to 312 months was appropriate, which was within the parameters of the relevant statutes. *See* NRS 176.035(1); NRS 193.330(1)(a)(1); NRS 200.366(3); NRS 200.508(1)(b)(1). Barral fails to demonstrate the district court relied upon impalpable or highly suspect evidence when imposing sentence. *See Randell v. State*, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) ("Judges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence." (brackets and internal quotation marks omitted)). Based on the record before this court, we conclude the district court did not abuse its discretion when imposing sentence.

Second, Barral argues his sentence constitutes cruel and unusual punishment because the district court disregarded the recommendation of the Division of Parole and Probation and did not properly consider the mitigation evidence. "A sentence within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (internal quotation marks omitted). As stated previously, Barral's sentence falls within the

parameters of the relevant statutes, *see* NRS 176.035(1); NRS 193.330(1)(a)(1); NRS 200.366(3); NRS 200.508(1)(b)(1), and Barral makes no argument the statutes are unconstitutional. In addition, the district court is not required to follow the sentencing recommendation of the Division of Parole and Probation. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk