

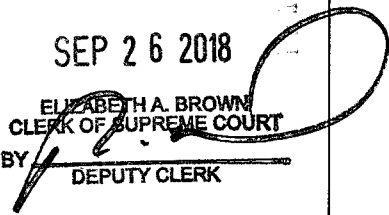
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC SHAWN ORDUNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73590

FILED

SEP 26 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Shawn Orduna appeals from a judgment of conviction entered pursuant to a guilty plea of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, Orduna argues the district court erred by denying his presentence motion to withdraw guilty plea. A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, “the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just.” *Id.* at 603, 354 P.3d at 1281.

In his motion, Orduna requested to withdraw his guilty plea because he suffered a mental breakdown when considering the plea offer and written plea agreement, he did not have sufficient time to consider the plea offer and agreement, and he did not understand the penalties he faced. Orduna also asserted he should be permitted to withdraw his guilty plea

because he had maintained his innocence and sought to withdraw the guilty plea shortly after its entry.

The district court conducted an evidentiary hearing regarding these issues. The district court found that Orduna's attorneys discussed the plea offer with him and explained the guilty plea agreement to him. The district court further found that Orduna acknowledged at the plea canvass that he understood the plea agreement and the possible penalties he faced by entry of his guilty plea. The district court noted that Orduna did not have a lengthy period of time to decide whether to accept the plea offer as the State did not agree to hold the offer open overnight, but the time period available to Orduna was sufficient for him to make a knowing and voluntary plea. The district court also found that Orduna understood his legal liability even if he did not administer the fatal blow to the victim and entered a guilty plea that conformed to Orduna's assertions regarding the facts of the case. In addition, the district court found Orduna did not demonstrate his decision to seek withdrawal of his guilty plea a few days after its entry was a sufficient reason to grant Orduna's request. *See id.* at 605, 354 P.3d at 1282 (explaining that entry of a guilty plea is not "a mere gesture, a temporary and meaningless formality reversible at a defendant's whim" (internal quotation marks omitted)). Finally, the district court concluded Orduna's testimony at the hearing demonstrated he merely wished to alter the plea agreement so that he would face a shorter prison sentence and did not wish to withdraw his plea entirely.

The district court found, based on the totality of the circumstances, Orduna failed to demonstrate a fair and just reason to withdraw his guilty plea, and denied the motion. The record before this court supports the district court's decision and we conclude Orduna has not

demonstrated the district court abused its discretion by denying his motion to withdraw his guilty plea. *See Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

Second, Orduna argues the district court abused its discretion at sentencing by believing he was more culpable than his codefendants and sentencing him to serve a lengthier prison sentence than his codefendants. Orduna also argues the district court improperly discounted the mitigation evidence. We review a district court's sentencing decision for an 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).

Our review of the record reveals the district court did not base its sentencing decision on impalpable or highly suspect evidence. During the sentencing hearing, the district court stated it had reviewed Orduna's sentencing memorandum and the mitigation information included with the memorandum. The district court also heard the defense presentation concerning Orduna's mitigation evidence. The district court stated it had reviewed all of the facts concerning this matter and understood Orduna's assertion that he had not struck the fatal blow to the victim. However, the district court explained the circumstances involved in the victim's death meant Orduna was criminally liable for the murder. The district court then sentenced Orduna to serve a prison term of life with the possibility of parole after 20 years, plus a consecutive term of 48 to 120 months for the deadly weapon enhancement. This sentence fell within the parameters of the

relevant statutes. See NRS 193.165(1); NRS 200.030(4)(b)(2). Further, the Nevada Supreme Court has stated “sentencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms,” see *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 391, 390 (1990), and therefore, Orduna does not demonstrate he is entitled to relief due to the lighter sentences given to his codefendants.¹ Accordingly, we conclude Orduna fails to demonstrate the district court abused its discretion when imposing sentence.


Third, Orduna argues the district court erred by failing to make specific findings to support its deadly-weapon-enhancement decision, as required by NRS 193.165(1). The record reveals that the district court made some findings, but failed to state on the record its findings concerning Orduna’s criminal history and the mitigating factors when it imposed the deadly weapon enhancement sentence. See NRS 193.165(1); *Mendoza-Lobos v. State*, 125 Nev. 634, 643, 218 P.3d 501, 507 (2009). Notwithstanding the district court’s failure to make specific findings regarding all of the factors contained within NRS 193.165(1), the parties discussed the information contained within those factors, the district court discussed that information when it imposed the sentence for Orduna’s primary offense of murder, and the record provides sufficient support for the sentence imposed. Given the record before this court, we conclude


¹To the extent Orduna argues his sentence is cruel and unusual because it is longer than the ones received by his codefendants, we conclude his contention lacks merit. See *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion); *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (observing that “[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” (internal quotation marks omitted)).

Orduna failed to demonstrate "the district court's failure to make certain findings on the record had any bearing on the district court's sentencing decision." *Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 508. Therefore, Orduna failed to demonstrate he is entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk