

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHASE DAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75618-COA

**FILED**

NOV 15 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Chase Day appeals from a judgment of conviction entered pursuant to a no-contest plea of issuance of check or draft without sufficient money or credit. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

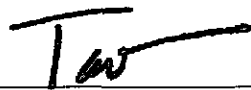
Day argues he is entitled to specific performance of his plea agreement. Day states he agreed to enter a no-contest plea to a felony offense, and in exchange, his offense would be reduced to a gross misdemeanor after he paid restitution. Day asserts the district court improperly declined to impose the sentence he agreed to in the plea agreement, but rather sentenced him to serve a prison term.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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).

The written plea agreement, which Day acknowledged having read and understood, specifically stated the sentence imposed was to be determined by the district court and Day's plea was not conditioned upon a particular sentence. Day's sentence of 19 to 48 months is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d); NRS 205.130(1), and Day does not allege that the district court relied on impalpable or highly suspect evidence. In addition, the district court's decision to decline to place Day on probation was within its discretion. *See* NRS 176A.100(1)(c). Considering the record before this court, we conclude Day fails to demonstrate the district court abused its discretion when imposing sentence or that he is entitled to specific performance of the plea agreement.<sup>1</sup> Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

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<sup>1</sup>To the extent Day argues he suffered from a breach of the plea agreement when the district court did not impose the jointly recommended sentence, we conclude this claim lacks merit as Day acknowledged in the written plea agreement the district court was not obligated to follow the parties' sentencing recommendation. *See Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) ("A plea agreement is construed according to what the defendant reasonably understood when he or she entered the plea.").

cc: Hon. Michael Montero, District Judge  
Humboldt County Public Defender  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk