

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN SANSOUCIE, A/K/A DUSTIN
SANKOUCIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77391-COA

FILED

JUN 19 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dustin Sansoucie appeals from a judgment of conviction entered pursuant to a guilty plea of possession of a short-barreled shotgun. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Sansoucie argues the district court abused its discretion by concluding he violated a failure-to-appear clause contained within the plea agreement and imposing the stipulated sentence of 19 to 48 months in prison. Sansoucie also contends the district court erred by failing to make a finding as to whether he willfully violated the failure-to-appear clause.

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 stated that in exchange for Sansoucie’s guilty plea to possession of a short-barreled shotgun, the State agreed to make no sentencing recommendation. However, the agreement

specified that the parties stipulated to a sentence of 19 to 48 months in prison if Sansoucie failed to appear at future court hearings or participate in the presentence investigation report interview. Sansoucie did not appear at the initial sentencing hearing. Sansoucie was later taken into custody and, at the subsequent sentencing hearing, Sansoucie contended he did not appear at the earlier hearing because his California probation officer did not give him permission to travel to Nevada and he had transportation problems. For those reasons, Sansoucie asserted he did not willfully violate the failure-to-appear clause and requested the district court to place him on probation. The district court found the terms of the written plea agreement had been negotiated by the parties, the agreement contained a failure-to-appear clause, and Sansoucie had violated the failure-to-appear clause when he did not attend the sentencing hearing or ensure the court had been notified of any travel issues hindering his ability to attend that hearing. The district court then imposed the stipulated sentence of 19 to 48 months in prison.

The Nevada Supreme Court has previously ruled that failure-to-appear clauses are lawful and enforceable, and a criminal defendant “should have reasonably expected that his failure to appear at the first sentencing” would violate that clause. *Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005). Therefore, Sansoucie does not demonstrate the district court erred by enforcing the failure-to-appear clause after finding he did not appear at the initial sentencing hearing.

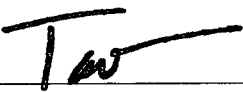
Sansoucie also contends that pursuant to *Gamble v. State*, 95 Nev. 904, 908, 604, P.2d 355, 337 (1979), the district court was required to make a finding that he willfully violated the plea agreement before it could enforce the failure-to-appear clause. However, the Nevada Supreme Court

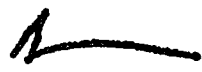
has already concluded *Gamble* is not applicable to situations involving the violation of a failure-to-appear clause contained within a plea agreement. *See Sparks*, 121 Nev. at 111, 110 P.3d at 488.

In addition, the sentence imposed was within the parameters of the relevant statutes, *see* NRS 193.130(2)(d); NRS 202.275(1), and Sansoucie does not argue the sentence was based on highly impalpable or suspect evidence. Moreover, the district court's decision to decline to impose a term of probation was within its discretion. *See* NRS 176A.100 (1)(c). Based on the record before this court, we conclude Sansoucie failed to demonstrate the district court abused its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk