

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL TODD BREWER,

No. 37046

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**MAR 15 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of three counts of burglary. The district court sentenced appellant to serve three consecutive terms of 48-120 months in prison and ordered him to pay \$9,047.41 in restitution.

Appellant contends that the district court relied on highly suspect evidence at sentencing and punished appellant for future crimes that he had not yet committed. Appellant therefore asks this court to remand this matter to the district court for a new sentencing hearing before a different district court judge. We decline to do so.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> There are few limitations on a district court's right to consider evidence in determining the appropriate sentence, and "courts are generally free to consider information extraneous to the pre-sentencing report."<sup>2</sup> The district court also "has wide discretion to consider prior uncharged crimes" to gain "a fuller assessment of the defendant's 'life, health, habits,

<sup>1</sup>See *Houk v. State*, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>2</sup>*Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

conduct, and mental and moral propensities.'"<sup>3</sup> Considering the broad discretion afforded to the district court in sentencing, we will refrain from interfering with the sentence imposed "[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."<sup>4</sup>

Here, the State presented the district court with a document prepared by the detective who investigated appellant's crimes, which predicted the total financial harm appellant could have caused in one year if he had not been apprehended. The report indicated that the financial impact would have exceeded \$500,000.00.

Appellant complains that this evidence was highly speculative evidence and that he was prejudiced by the district court's consideration of this evidence because the district court punished him for the harm that he might have caused if he had not been apprehended. Appellant analogizes his situation to that in Denson, wherein this court held that while the district court may consider prior uncharged crimes, it must refrain from punishing a defendant for such crimes.<sup>5</sup>

We agree with appellant that the report offered by the State was highly speculative to the extent it purported to predict the total financial harm that appellant would have caused in a year if he had not been apprehended. As such, the State should not have offered the evidence and we expressly disapprove of the use of such evidence at sentencing. But

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<sup>3</sup>Id. at 494, 915 P.2d at 287 (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).

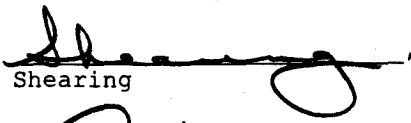
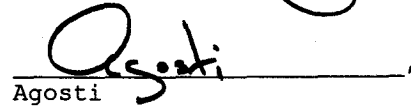
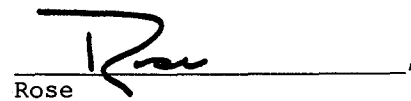
<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>5</sup>Denson, 112 Nev. at 494, 915 P.2d at 287.

based on our review of the record, it does not appear that appellant was prejudiced by the district court's consideration of the report. In imposing the sentence, the district court did not mention the report. Rather, the district court focused on appellant's rather extensive history of property offenses: "Well, based on the fact that you appear to be a career criminal, from this record, going back a decade or more, I really have an obligation to protect society from somebody that will do this kind of thing as a living. It looks like for some period of time you were making your living by theft . . . ." Under the circumstances, we conclude that appellant cannot demonstrate prejudice resulting from the district court's consideration of the report.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

  
Shearing J.  
  
Agosti J.  
  
Rose J.

cc: Hon. Steven P. Elliott, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk