

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN PAUL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67937

FILED

NOV 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of attempted sexual assault of a minor under the age of 14. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Devin Paul first argues the district court abused its discretion when imposing his sentence because it was based on impalpable or highly suspect evidence. Paul asserts the district court improperly considered information from one victim that inferred he committed other uncharged acts of sexual abuse against an additional victim. Paul also argues the State's assertion the victims will be harmed for the rest of their lives due to his actions was improper because there was no expert testimony provided to support that conclusion. Paul did not object to these statements in the district court and thus, we review for plain error. See *Dieudonne v. State*, 127 Nev. 1, 4, 245 P.3d 1202, 1204-05 (2011).

A sentencing "court is privileged to consider facts and circumstances which clearly would not be admissible at trial." *Silks v. State*, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976). However, we "will reverse a sentence if it is supported *solely* by impalpable and highly

suspect evidence.” *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). “Possession of the fullest information possible concerning a defendant’s life and characteristics is essential to the sentencing judge’s task of determining the type and extent of punishment.” *Id.*


Our review of the record reveals the district court did not base its sentencing decision on impalpable or highly suspect evidence. At the sentencing hearing, the State referenced the victim’s statements. In one statement, a victim asserted another girl who had been at the daycare where Paul had committed the abuse had later attempted to commit suicide, which caused the victim to wonder if that girl had also been abused. Both victims also explained the long term harm Paul’s actions have caused them and that they still suffer ill effects from Paul’s abuse many years later.


When imposing sentence, the district court made no references to any uncharged conduct or stated that Paul would be punished for additional crimes. The district court specifically stated Paul would be sentenced for his abuse of the two victims in this case. In addition, the district court properly considered the victims’ statements regarding the harm they continue to suffer as a result of the sexual abuse. See NRS 176.015(3)(b). Accordingly, Paul fails to demonstrate his sentence was based solely on impalpable or highly suspect evidence. Therefore, Paul fails to demonstrate plain error affecting his substantial rights. See *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

Second, Paul argues his sentence is cruel and unusual. Paul does not demonstrate the relevant sentencing statutes are unconstitutional or that his sentence is so disproportionate so “as to shock the conscience.” See *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 248

(1996) (internal quotation marks omitted). Moreover, Paul's sentence of consecutive terms of eight to twenty years falls within the parameters of the relevant statutes. See NRS 193.330(a)(1); NRS 200.366(3)(c). Therefore, Paul is not entitled to relief for this claim.

Having concluded Paul is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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