IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEATON ARMOND BUTLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76872-COA

FILED

JUL 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Keaton Armond Butler appeals from a judgment of conviction entered pursuant an *Alford*[1] plea of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Butler argues that the district court abused its discretion by rejecting the plea bargain. Butler acknowledges the district court accepted the plea agreement, but argues that by declining to follow the parties' sentencing stipulation in the agreement, the court effectively rejected the plea bargain. He further contends that the district court should have set forth its reasoning for rejecting the plea bargain. Lastly, he asserts that the district court should have given him an opportunity to withdraw the guilty plea when it rejected the stipulated sentence. We disagree.

Butler cites *Sparks v. State*, 104 Nev. 316, 322-23, 759 P.2d 180, 184-85 (1988) and *Sandy v. Fifth Judicial Dist. Ct.*, 113 Nev. 435, 440, 935 P.2d 1148, 1151 (1997), in support of his arguments that the district court rejected the plea bargain and should have set forth its reasons for doing so. These cases, however, are inapposite because they address the rejection of a plea agreement, which Butler concedes the district court did not do.

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

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Although the district court did not follow the parties' sentencing stipulation, it did not reject the plea agreement.

"[T]rial judges need not accept sentence bargains, *i.e.*, plea bargains which purport to guarantee defendants a certain sentence, because they offend the judicial prerogative to sentence." *Sandy*, 113 Nev. at 440 n.1, 935 P.2d at 1151 n.1. Thus, absent entry of a conditional plea based upon the court's acceptance of the parties' sentencing recommendation or the judge's expression of an inclination to follow the parties' sentencing recommendation, the court is not bound by the parties' sentencing recommendations or stipulations, and the court's refusal to impose a stipulated sentence does not mandate withdrawal of the plea. *See* NRS 174.035(4); *Cripps v. State*, 122 Nev. 764, 771, 137 P.3d 1187, 1191-92 (2006) (stating when a district court has indicated it will follow the parties' sentencing recommendation and later declines to do so, "the defendant must be given an opportunity to withdraw the plea").

The language of the written plea agreement did not bind the court to impose the stipulated sentence, nor did it condition Butler's plea on the district court's imposition of the stipulated sentence. Rather, the written plea agreement specifically stated that the court was not obligated to accept the parties' sentencing stipulation. Moreover, Butler did not demonstrate the district court expressed an inclination to accept the parties' stipulated sentence and, therefore, the district court was not required to permit Butler to have an opportunity to withdraw his plea and proceed to trial after it rejected the stipulated sentence.

To the extent Butler argues the district court abused its discretion when imposing sentence, his claim lacks merit. 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).

At the sentencing hearing, the district court stated it had reviewed the facts of the crime, noted Butler was also discovered in the possession of cocaine, and noted he was serving a term of probation for an unrelated offense. The district court imposed a term of 36 to 120 months in prison, which was within the parameters of the relevant statute. *See* NRS 200.481(2)(e)(1). Butler does not allege the district court relied upon impalpable or highly suspect evidence when it imposed sentence. Moreover, Butler fails to demonstrate the district court abused its discretion merely because it deviated from the parties' stipulated sentence. *See Stahl v. State*, 109 Nev. 442, 444, 851 P.2d 436, 438 (1993) ("When a defendant pleads guilty pursuant to a plea agreement containing a sentencing recommendation, and the district court accepts the proffered guilty plea, the district court retains wide discretion in imposing sentence." (footnote omitted)). Therefore, we conclude Butler fails to demonstrate he is entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
The Law Office of Stephen Reid, Esq.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk