IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAYLOR JAY GRUEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78041-COA

ORDER OF AFFIRMANCE

Taylor Jay Gruey appeals from a judgment of conviction, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen years old. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Gruey argues the district court abused its discretion at sentencing by imposing consecutive sentences.

It is within the district court's discretion to impose consecutive sentences. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015); *Warden v. Peters*, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). This court 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." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Gruey acknowledges he was not eligible for probation and the district court was required to impose a term of life with the possibility of parole after ten years for each count. *See* NRS 201.230(2). He argues, however, that the Division of Parole and Probation's (Division) recommendation for consecutive sentences exceeded the bounds of reason

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because his scores on the Probation Success Probability (PSP) form and the Sentencing Scale would have resulted in a recommendation for probation had it been a sentencing option. Based on this argument, Gruey asserts that, to the extent the district court relied on the Division's recommendation for consecutive sentences, the district court relied on impalpable and highly suspect evidence when imposing sentence.

The Division's PSP form and Sentencing Scale do not address and provide no guidance as to whether the Division should recommend that multiple sentences be imposed to run concurrently or consecutively. Therefore, the Division's recommendation of consecutive sentences was not inconsistent with Gruey's PSP and Sentencing Scale scores. To the extent Gruey urges the adoption of a rule requiring the Division to recommend concurrent sentences when a defendant is ineligible for probation, but his or her scores would otherwise allow for a recommendation for probation, we decline to adopt such a rule. We conclude the Division's recommendation of consecutive sentences did not constitute impalpable and highly suspect evidence and the district court did not abuse its discretion by imposing consecutive sentences.

Gruey also argues the prosecutor committed misconduct at sentencing. Gruey specifically challenges the prosecutor's statements regarding grooming of the victim and the psychological damage suffered by the victim. He asserts that because the State did not present a psychological expert to testify as to these issues, and because neither the victim nor her representative provided a victim impact statement at sentencing that could be subject to cross-examination,[1] the prosecutor's

[1]Neither the victim nor her representative testified at sentencing, but both of them provided some form of written victim impact statement.

statements were improper and constituted unsworn testimony. Because Gruey never objected on this basis below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018), *cert. denied*, 139 S. Ct. 415 (October 29, 2018).

Gruey has failed to demonstrate any error. Contrary to Gruey's assertion, the prosecutor did not provide unsworn testimony at sentencing. Rather, the record reveals that the prosecutor's references to grooming and the psychological damage suffered by the victim were stated in the context of arguments made to rebut Gruey's request for concurrent sentences and to support the State's request for consecutive sentences. The prosecutor's references were based upon information before the judge at sentencing and on reasonable inferences that could be made from that information. And, at sentencing, the district court may "consider facts and circumstances which clearly would not be admissible at trial." *Silks*, 92 Nev. at 93-94, 545 P.2d at 1161. Accordingly, we conclude no relief is warranted.

Having concluded Gruey's claims lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk