

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC CASIMIRO-RODRIGUEZ, A/K/A
ERIC RODRIGUEZ CASIMIRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69828

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Eric Casimiro-Rodriguez appeals from a judgment of conviction entered pursuant to a guilty plea of second-degree kidnapping with the use of a deadly weapon and battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Casimiro-Rodriguez claims he was deprived of due process and a fair sentencing hearing when the district court relied upon materially untrue assumptions about his criminal record in rendering its sentencing decision. Casimiro-Rodriguez asserts the district court misapprehended his criminal record when it stated,

I disagree with characterizing something as an isolated incident when there's been problems, domestic problems in your marriage up into the time this event occurred as well as at least three prior convictions for domestic violence, several of which have occurred after the federal government said you're in the country illegally, you committed a crime of violence we're deporting you.

And Casimiro-Rodriguez argues (1) the presentence investigation report (PSI) indicates he has only two prior convictions for domestic violence; (2) the term "several" is generally accepted to mean 'more than two.' Here,

there were only two domestic violence convictions in total,” and (3) the district court stated its belief he was deported for crimes of violence, but the PSI only mentions “Alien Inadmissibility under Section 212.”¹

We review a district court’s sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Generally, a district court does not abuse its discretion if it imposes a sentence within the statutory limits and does not rely on impalpable or highly suspect evidence. *Etcheverry v. State*, 107 Nev. 782, 786, 821 P.2d 350, 352 (1991). However, a district court violates a defendant’s due process rights if it bases its sentencing decision on “materially untrue assumptions concerning his criminal record.” *State v. Eighth Judicial Dist. Court*, 100 Nev. 90, 96, 677 P.2d 1044, 1048 (1984). To assert a due process violation based on the information used in sentencing, the “defendant must show that the disputed information is (1) false or unreliable, and (2) demonstrably made the basis for his or her sentence.” *United States v. Columbus*, 881 F.2d 785, 787 (9th Cir. 1989).

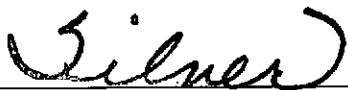
The PSI demonstrates Casimiro-Rodriguez had previously been arrested for domestic violence three times. The first arrest resulted in a battery conviction and the other two arrests resulted in battery-constituting-domestic-violence convictions. United States Immigration and Customs Enforcement initiated deportation proceedings against Casimiro-Rodriguez immediately after his first battery conviction, and Casimiro-Rodriguez was deported to Mexico immediately after he completed his sentence for that battery—a crime of violence. The sentencing transcript demonstrates the district court based its sentencing


¹See 8 U.S.C. 1182 (2013).

decision on the fact Casimiro-Rodriguez continues to commit crimes and the instant crime consisted of his "breaking into [his] wife's house, hiding in her closet, kidnapping her, and raping her at gunpoint and beating her."

Based on this record, we conclude the district court did not rely upon materially untrue assumptions about Casimiro-Rodriguez' criminal record in rendering its sentencing decision and the district court's sentencing decision did not violate Casimiro-Rodriguez' right to due process of law. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Resch Law, PLLC d/b/a Conviction Solutions
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk