

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CONRAD FRANK DUNN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69553

**FILED**

AUG 16 2016

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 failure to stop upon signal of a police officer in a manner which endangers other persons. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

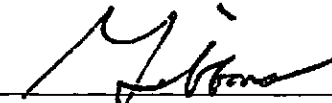
Appellant Conrad Frank Dunn argues his guilty plea was invalid because he did not understand the minimum term he faced. Challenges to the validity of a guilty plea must generally be raised in the district court in the first instance by either filing a presentence motion to withdraw the plea or commencing a postconviction proceeding pursuant to NRS chapter 34. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *limited by Smith v. State*, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994); *see also Harris v. State*, 130 Nev. \_\_\_, \_\_\_, 329 P.3d 619, 628 (2014); *O'Guinn v. State*, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002). Dunn did not file a presentence motion to withdraw his guilty plea. We therefore conclude this claim is not appropriate for review on direct appeal and we decline to address it. *See O'Guinn*, 118 Nev. at 851-52, 59 P.3d at 489-90.


Dunn also argues the district court abused its discretion by choosing to sentence him to a prison term rather than a term of probation.


Dunn asserts he was granted probation in a separate matter in a different county and that he was amenable to probation. 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). 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).

Our review of the record reveals the district court did not base its sentencing decision on impalpable or highly suspect evidence. During the sentencing hearing, the parties discussed Dunn's lengthy criminal history and Dunn presented arguments in favor of probation. The district court then explained it considered probation, but concluded probation was not appropriate based upon Dunn's history. This was within the district court's discretion. See NRS 176A.100(1)(c). The district court sentenced Dunn to serve a term of 28 to 72 months in prison, which was within the parameters of the relevant statute. See NRS 484B.550(3)(b). We conclude Dunn fails to demonstrate the district court abused its discretion when imposing sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. John Schlegelmilch, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk