

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYLER JAMES BELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70122

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Tyler James Bell appeals from a judgment of conviction entered pursuant to a guilty plea of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Bell claims he was deprived of due process and a fair sentencing hearing when the district court relied upon materially untrue information about his crime in rendering its sentencing decision. Bell argues the prosecutor misrepresented the facts of his crime in order to suggest it is factually similar to another crime in his criminal record. And Bell asserts the prosecutor's statement that he rammed the law enforcement vehicles at a high rate of speed is belied by the record, which reveals he was struck by the law enforcement vehicles as he slowly drove away from the crime scene.


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 record demonstrates Bell admitted to committing battery with the use of a deadly weapon "by ramming the vehicle [he was] driving into a patrol vehicle parked and occupied by Detective Tabor and/or Lieutenant Chavez resulting in substantial bodily harm to either or both of those two individuals." Based on this record, we conclude the district court did not rely upon materially untrue assumptions about Bell's crime in rendering its sentencing decision and the district court's sentencing decision did not violate Bell's 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
Hofland & Tomsheck
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk