

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES HARRISON FOULKES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77705-COA

FILED

SEP 30 2019

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

ORDER OF AFFIRMANCE

James Harrison Foulks appeals from a judgment of conviction, entered pursuant to a nolo contendere plea, of coercion—sexually motivated. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Foulks claims the district court abused its discretion at sentencing by declining to place him on probation. Foulks claims he was a suitable candidate for probation and the Division of Parole and Probation, he, and the State all recommended probation. He asserts the district court acted arbitrarily and capriciously by rejecting the recommendations for probation and imposing a sentence that was opposite of that recommended. Foulks further asserts it appears the district court declined to place him on probation based on an emotional concern that the failure to incarcerate him would be seen as an implicit rejection by the court of the truth of the victim's allegations.

Because Foulks was certified as not a high risk to reoffend, the district court had discretion to impose probation. See NRS 176A.100(1)(c); NRS 176A.110(1)(a). 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). A district court is not bound by the recommendations by the Division of Parole and Probation, and it is not an abuse of discretion for a district court to impose a sentence that exceeds the State’s recommendation. *Dunham v. State*, 134 Nev., Adv. Op. 68, *10, 426 P.3d 11, 15 (2018).

Foulks’ sentence of 24 to 60 months in prison is within the parameters provided by the relevant statute, *see* NRS 207.190(2)(a), and Foulks does not allege that the district court relied on impalpable or highly suspect evidence. Further, when viewed in context, the record does not demonstrate that the district court imposed sentence based on an emotional concern. We conclude the district court did not act arbitrarily and capriciously by rejecting the recommendations for probation and imposing a prison term. Accordingly, we conclude the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk