

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAKEYSHA HIGHTOWER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78236-COA

FILED

JAN 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lakeysa Hightower appeals from a judgment of conviction entered pursuant to a guilty plea for conspiracy to commit kidnapping. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Hightower first contends the sentencing judge was biased. She claims he closed his mind to the presentation of all the evidence, as demonstrated by his repeated interruptions of counsel and his comment early in the sentencing hearing, "I think she needs to go to prison." "[A] judge's remarks made in the context of a court proceeding may be indicative of prejudice or improper bias if they demonstrate 'the judge has closed his or her mind to the presentation of all the evidence.'" *State v. Eighth Judicial Dist. Court*, 132 Nev. 600, 604, 376 P.3d 798, 801 (2016) (quoting *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998)).

The record does not support that the sentencing judge closed his mind to the presentation of all of the evidence. The judge's comments about his thoughts early in the proceeding did not necessarily mean he would not consider additional evidence or argument. And by that point, the

judge already had Hightower's sentencing memorandum and presentence investigation report. Further, until the judge's comment about prison, the judge and defense counsel had been interrupting one another, but after the comment, the judge allowed counsel to argue Hightower's position without interruption. Finally, at the close, the sentencing judge explained why he was sentencing Hightower to prison (her criminal history and repeated probation violations) and sentenced her to 14 to 36 months in prison, one of the lowest prison terms possible.¹ For these reasons, we conclude Hightower has failed to demonstrate the sentencing court was biased.

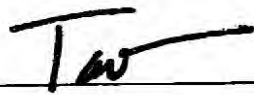
Hightower next contends the district court violated the separation of powers provisions of the United States and Nevada Constitutions by considering the protection of society when imposing Hightower's sentence. The separation of powers doctrine prohibits one branch of government from exercising functions that appertain to another branch. *Mendoza-Lobos v. State*, 125 Nev. 634, 639, 218 P.3d 501, 504 (2009). Determining the sentence to apply is a function of the judiciary. *Id.* at 639-40, 218 P.3d at 505. And within that function, the district court is afforded broad discretion "to consider a wide, largely unlimited variety of information." *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). Hightower has not demonstrated considering the protection of society is outside judicial functions. *Cf. Sparks v. State*, 104 Nev. 316, 323, 759 P.2d 180, 184 (1988) (holding judges may consider the public interest

¹The minimum sentence that could be imposed was 12 to 30 months in prison. See NRS 193.130(1); NRS 199.480(1)(a).

in deciding whether to accept a guilty plea). We therefore conclude the district court did not violate the separation of power provisions. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District
Eighth Judicial District, Dept. 8
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk