

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CALEB DAVID LUNDGREN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77977-COA

**FILED**

FEB 11 2020

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

*ORDER OF AFFIRMANCE*

Caleb David Lundgren appeals from a judgment of conviction entered pursuant to a guilty plea to one count of sexually motivated coercion. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Lundgren contends the district court erred by denying his motion to continue his sentencing hearing. We review the district court's denial of a motion to continue for an abuse of discretion. *Mulder v. State*, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000). "However, if a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court's decision to deny the continuance is not an abuse of discretion." *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010).

Lundgren's presentence investigation report contained a psychosexual evaluation that concluded he was a high risk to reoffend. Lundgren sought to continue the sentencing hearing to give him more time to have his own expert review the evaluation for errors. The district court denied the motion, concluding the evaluation comported with the statutory requirements. Lundgren has identified several concerns with the evaluation that he raised at his sentencing hearing.

First, he pointed out a calculating error with regard to his STATIC-99R score. The evaluator acknowledged the error in an addendum to the evaluation but indicated it did not change that tool's classification of Lundgren as an above-average risk. Further, the evaluator concluded it did not change his opinion that Lundgren was a high risk to reoffend. Lundgren has failed to demonstrate he was prejudiced by the calculating error or its correction.

Second, Lundgren challenged the evaluator's use of the STABLE-2007 as a risk assessment tool. The record before this court demonstrates the evaluator concluded this tool showed Lundgren was only a "moderate" risk to reoffend, but the evaluator nevertheless concluded he was a high risk. Thus, even assuming the tool was not appropriate for assessing risk, Lundgren has not demonstrated he was prejudiced by its use as a risk assessment tool.


Finally, Lundgren questioned the propriety of the evaluator's "override" of the score indicators and his "questionable" diagnosis of sexual sadism. However, the statutes "do not mandate reliance on actuarial tools alone, and a clinician may rely on his or her professional opinion in conducting a psychosexual evaluation." *Blackburn v. State*, 129 Nev. 92, 98, 294 P.3d 422, 426 (2013). Here, the record demonstrates the evaluator relied on his professional opinion in reaching the conclusions that Lundgren was a sexual sadist and a high risk to reoffend. As this was not improper, Lundgren has failed to demonstrate he was prejudiced.

As discussed above, Lundgren failed to demonstrate he was prejudiced by the psychosexual evaluation. He therefore failed to demonstrate he was prejudiced by the district court's denial of his motion

to continue sentencing in order to probe possible issues in the evaluation.  
Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Barry L. Breslow, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk