IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL CHRISTOPHER BECKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77941-COA



*ORDER OF AFFIRMANCE*

Daniel Christopher Becker appeals from a judgment of conviction entered pursuant to a guilty plea of three counts of driving under the influence of a controlled substance causing death. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Becker claims the district court abused its discretion at sentencing by improperly relying upon highly suspect or impalpable evidence. He argues that his presentence investigation report [PSI] constituted highly suspect or impalpable evidence because the Division of Parole and Probation erred in calculating its sentencing recommendation. And he asserts that he was prejudiced because the district court's sentencing decision was influenced by the error.

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). We will not interfere with the sentence imposed by the district court "[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). An error that taints the PSI sentencing

recommendation considered by the district court may constitute impalpable or highly suspect evidence. *Blankenship v. State*, 132 Nev. 500, 509, 375 P.3d 407, 413 (2016).

Here, the record demonstrates that Becker objected to the Division's sentencing recommendation because his raw score of 15 dictated a sentence of 48 to 240 months for each offense but the Division had recommended a sentence of 84 to 240 months for each offense. The district court agreed that there appeared to be an error and the error was significant. The district court asked if there was any reason that sentencing could not proceed if it acknowledged that the Division's sentencing recommendation was incorrect. Becker responded, "No. I'm quite content with that." The district court again acknowledged that the Division's recommendation was incorrect and should have been 48 to 240 months under the Division's criteria. The district court then proceeded with the hearing.

Prior to announcing the sentence, the district court stressed that sentencing was up to the district court and the Division's sentencing recommendation was just a recommendation. The district court pointed out that Becker no longer had a driver's license, he knew he should not be driving and, in this instance, he was "nine times the legal limit on marijuana." The district court expressly found that the Division's sentencing recommendation was "inaccurate, and certainly not applicable given the facts of the case." The district court subsequently sentenced Becker to 84 to 240 months in prison for each offense. Rather than following the Division's recommendation to run the prison terms concurrently, the district court imposed the prison terms to run consecutively.

Because the district court expressly disclaimed reliance upon the Division's sentencing recommendation and provided a basis for imposing the sentence it did, Becker has failed to demonstrate the district court's sentencing decision was influenced by the error in the PSI. *See id.* at 511, 132 P.3d at 414. We therefore conclude Becker has failed to demonstrate the district court abused its discretion by relying upon impalpable or highly suspect evidence when imposing the sentence.

Second, Becker claims his aggregate sentence of 21 to 60 years constitutes cruel and unusual punishment because it is unreasonably disproportionate to his offenses and it punishes him "as if he intended" to cause the deaths of others.

Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

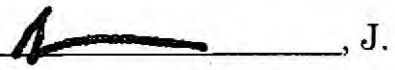
Becker's sentence falls within the parameters of the relevant statute, and he does not allege that the statute is unconstitutional. *See* NRS 484C.430(1). We note that the record demonstrates that Becker knew that driving with his history of seizure disorders would put other people at risk and yet he chose to drive anyway. And we conclude the sentence imposed

is not grossly disproportionate to his offenses and does not constitute cruel and unusual punishment.

Having concluded Becker is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk