

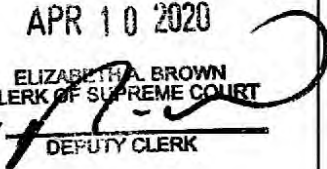
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE RODOLFO BARAJAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79995-COA

FILED

APR 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Rodolfo Barajas appeals from a judgment of conviction entered pursuant to a guilty plea of possession of a controlled substance for sale. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Barajas claims the district court abused its discretion at sentencing by extending his minimum sentence based on the length of time he had spent in presentence confinement. To this end, he argues that the district court's sentencing decision violates his constitutional rights to equal protection of the law and due process.


We review a district court's sentencing decision for an 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).

Barajas' 19- to 48-month prison sentence falls within the parameters of the relevant statutes. See NRS 193.130(2)(d); NRS

453.337(2)(a). The record demonstrates that he received 219 days' credit for time served in presentence confinement.¹ And he does not allege the district court relied upon impalpable or highly suspect evidence when it imposed the sentence.

Moreover, the district court plainly stated it was imposing this sentence so Barajas would have incentive to change his life and successfully complete probation. We note the district court was not required to follow the sentencing recommendation of the Division of Parole and Probation, see *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972), and Barajas' constitutional claims consist of bare allegations that do not entitle him to relief, cf. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We conclude Barajas failed to demonstrate that the district court abused its sentencing discretion. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Barajas claims in his appeal that he served 319 days in presentence confinement. This claim is belied by the record on appeal.

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk