

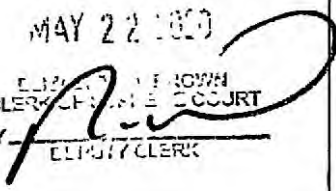
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WAYNE LAMON MAY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79980-COA

FILED

MAY 22 2010

ELIZABETH W. BROWN
CLERK OF APPEALS COURT
BY  ELIZABETH W. BROWN
CLERK

ORDER OF AFFIRMANCE

Wayne Lamon May, Jr., appeals from a judgment of conviction entered pursuant to a guilty plea of battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

First, May claims that District Judge Herndon demonstrated he was biased and had closed his mind to the presentation of all the evidence when he stated,

And to be fair, I'll just tell you so you can address your comments to it, I don't know if I'm inclined to follow the negotiation for probation. In light of his record, the other case that's pending with a warrant, and what I perceive to be [a] pretty violent case against this woman. So. But go ahead.

A judge is presumed to be impartial and the burden rests with the challenger to demonstrate sufficient facts establishing bias. *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). Moreover, the "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has

closed his or her mind to the presentation of all the evidence.” *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Here, Judge Herndon plainly stated, “I don’t know if I’m inclined to follow the negotiation for probation.” This ambivalent remark does not show the judge closed his mind to the presentation of all the evidence. Consequently, May has not demonstrated sufficient facts to establish impermissible bias or prejudice.

Second, May claims the district court abused its discretion at sentencing by refusing to follow the parties’ plea agreement and imposing a term of imprisonment.


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 palpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The district court’s decision to grant probation is discretionary. NRS 176A.100(1)(c).

Here, May’s sentence of 14 to 40 months in prison falls within the parameters of the relevant statutes. *See* NRS 193.130(2)(c); NRS 200.481(2)(b). May does not allege the district court relied on palpable or highly suspect evidence. And the record demonstrates the district court considered May’s mitigation arguments and determined that probation was not appropriate based on May’s crime and his history of violent felonies.

Given this record, we conclude the district court did not abuse its discretion at sentencing.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk