

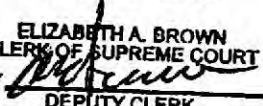
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY LOY ARAGON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79064-COA

**FILED**

AUG 19 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Anthony Loy Aragon appeals from an amended judgment of conviction, pursuant to a guilty plea, of conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In December 2018, a group of men allegedly murdered two teenage boys in New Mexico.<sup>1</sup> Although Aragon did not participate in the double homicide, he helped dispose of the bodies in the desert and destroyed evidence. He fled New Mexico and, roughly a week later, committed three robberies over three days in Las Vegas, Nevada. Aragon and his co-defendants were charged with targeting victims in parking lots and garages. In the first robbery, Aragon fired a gun to get the victim's attention, pointed it at her, and warned her not to call 9-1-1. Similarly, in the other two robberies, Aragon and his co-defendants pointed a gun at the victims and demanded their property. The police eventually located Aragon and his co-defendants in their hotel room at the Luxor, where officers recovered property belonging to each of the victims.

The State charged Aragon by way of grand jury indictment with two counts of conspiracy to commit robbery, and three counts of robbery with

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

use of a deadly weapon. The State later filed a superseding indictment, charging Aragon with: one count each of attempted robbery with use of a deadly weapon, battery with intent to commit robbery, and assault with a deadly weapon; two counts of conspiracy to commit robbery; and three counts of robbery with use of a deadly weapon.

Aragon accepted a guilty plea agreement for one count of conspiracy to commit robbery and one count of robbery with use of a deadly weapon with a sentencing recommendation of 6 to 15 years. At the sentencing hearing, the State referred to Aragon's criminal history, which included Aragon's involvement in the New Mexico double homicide and his 2018 arrest for aggravated assault with a deadly weapon related to a domestic dispute where Aragon shot a gun in the direction of his ex-wife. Further, in the amended presentence investigation report (PSI), the State submitted the Criminal Investigations Division Report (CIDR) prepared by the New Mexico detectives in the double homicide case. The CIDR states that, while incarcerated for the robberies in this case, the New Mexico detectives advised Aragon of his *Miranda* rights and questioned him about the double homicide. Aragon waived his *Miranda* rights and admitted to the detectives that he met the group of men, drove the car with the bodies inside, bought cleaning supplies, and went to the desert to dispose of the bodies, clothing, and other various pieces of evidence. Aragon added that he returned to the scene to bury the bodies after realizing the media attention on the boys' disappearance. While the CIDR contained gruesome details of the double homicide, it clearly stated that Aragon's involvement came after the men murdered the two boys.

The district court followed the guilty plea agreement and sentenced Aragon to an aggregate sentence of 72 to 180 months, which was the parties' agreed upon aggregate sentence. For the conspiracy to commit

robbery offense, the district court sentenced Aragon to 24 to 60 months of incarceration. And, for the robbery with use of a deadly weapon offense, the district court sentenced him to a consecutive 36 to 90 months of incarceration to be followed by a consecutive 12-to-30-month sentence for the deadly weapon enhancement.

On appeal, Aragon argues that the district court abused its discretion when sentencing him by considering the CIDR and the 2018 arrest for aggravated assault with a deadly weapon. Namely, Aragon argues that considering the CIDR and the use of his admission to his involvement in the New Mexico case was unfairly prejudicial.<sup>2</sup> He further argues that his 2018 arrest was not relevant to the instant case and, as a result, the district court erred by considering it.

We review sentencing decisions for an abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). “So long as the

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<sup>2</sup>Aragon seems to conflate his Fifth Amendment argument with, what appears to be, a Sixth Amendment challenge to the district court’s consideration of his admissions to the New Mexico detectives. This muddled argument has no bearing on our disposition. Nonetheless, we conclude that the district court’s consideration of Aragon’s admission did not violate his Fifth or Sixth Amendment rights in this case. See *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (“[W]hen a defendant is read his *Miranda* rights (which include the right to have counsel present during interrogation) and agrees to waive those rights, that typically does the trick . . . .”); *Flowers v. State*, 136 Nev. 1, 12, 456 P.3d 1037, 1048 (2020) (“[A] defendant’s statements regarding offenses for which he had not been charged [are] admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged offenses.” (second alteration in original) (quoting *Texas v. Cobb*, 532 U.S. 162, 168 (2001))); *Kaczmarek v. State*, 120 Nev. 314, 327, 91 P.3d 16, 25 (2004) (“[T]he offense-specific Sixth Amendment right does not require suppression of statements deliberately elicited during a criminal investigation merely because the right has attached and been invoked in an unrelated case.”).

record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence, this court will refrain from interfering with the sentence imposed.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

The sentencing court “is privileged to consider facts and circumstances which clearly would not be admissible at trial.” *Id.* at 93-94, 545 P.2d at 1161. Indeed, in its PSI, the Division of Parole and Probation must submit a vast variety of information regarding the defendant, including any arrests from the preceding 10 years, “[u]nresolved criminal cases involving the defendant,” and information from “investigative report[s] filed with law enforcement.” NRS 176.145(1)(a)(2), (4) (2017); NRS 176.145(3)(b) (2017).

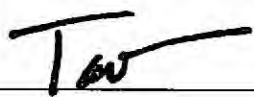
Here, the district court did not abuse its discretion by considering Aragon’s admission in the New Mexico case or his 2018 arrest for aggravated assault with a deadly weapon because this information was supported by facts, not impalpable evidence. *See* NRS 176.145(1)(a)(2), (4); NRS 176.145(3)(b); *Silks*, 92 Nev. at 94, 545 P.2d at 1161. Moreover, the pending New Mexico charge and prior arrest were relevant to the district court when fashioning a sentence in this case and were not unduly prejudicial because they show Aragon’s character and criminal history. *See* NRS 176.145(1)(b) (2017) (providing that the PSI must include “[i]nformation concerning the characteristics of the defendant”). When Aragon committed the string of robberies in Nevada, he was on the run after disposing of the boys’ bodies in New Mexico a week prior. *See Silks*, 92 Nev. at 93, 545 P.2d at 1160 (concluding that the district court did not abuse its discretion by considering, amongst other things, how the defendant had escaped from a prison while incarcerated for another crime when he


committed the instant crime). Additionally, the 2018 arrest involved the use of a firearm, as did the three robberies in this case.


We further conclude that Aragon's sentence of 72 to 180 months is consistent with the recommendations in the guilty plea agreement and it is within the statutory sentencing limits for each offense. *See* NRS 193.165 (providing that for a deadly weapon enhancement, the district court can add 1 to 20 years to the defendant's sentence); NRS 199.480 (authorizing a sentence of 1 to 6 years for conspiracy to commit robbery); NRS 200.380 (authorizing a sentence of 2 to 15 years for robbery). And thus, the district court did not abuse its discretion in its sentencing decision. *See Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978) ("When the sentence is within statutory limits and when there has been no proof of judicial reliance upon 'impalpable or highly suspect evidence,' this court will refrain from interference with the trial court's imposition of sentence." (citation omitted) (quoting *Silks*, 92 Nev. at 94, 545 P.2d at 1161)).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Legal Resource Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk