

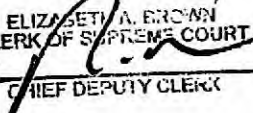
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRICK BRASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80017-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Derrick Brass appeals from a judgment of conviction entered pursuant to an *Alford*¹ plea of two counts of attempted sexual assault. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Brass claims the district court abused its discretion at sentencing by failing to rule on his objections to the presentence investigation report (PSI), particularly those relating to the scores that he received on the Probation Success Probability (PSP) score sheets. He asserts that he informed the district court that he continued to have objections to the PSP scores even though the district court was inclined to follow the parties' negotiations. And he argues the district court's failure to rule on his objections was prejudicial because the scores are incorrect; they will follow him to prison; and they will be used to determine his parole eligibility, classification, and eligibility for programs.

¹See *North Carolina v. Alford*, 400 U.S. 25 (1970).

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). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "[A]n abuse of discretion [also] occurs whenever a court fails to give due consideration to the issues at hand." *Patterson v. State*, 129 Nev. 168, 176, 298 P.3d 433, 439 (2013).

"A defendant has the right to object to factual or methodological errors in sentencing forms, so long as he or she objects before sentencing." *Blankenship v. State*, 132 Nev. 500, 508, 375 P.3d 407, 412 (2016) (brackets and internal quotation marks omitted). The Nevada Supreme Court has emphasized that any objections made by a defendant to his PSI "must be resolved prior to sentencing." *Id.*; *Sasser v. State*, 130 Nev. 387, 390, 324 P.3d 1221, 1223 (2014); *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011).

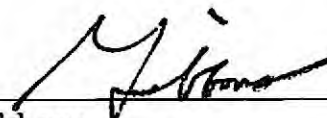
Brass properly objected to his PSI prior to sentencing and argued that his PSP scores should have been higher in several categories but were not because the Division of Parole and Probation relied upon subjective criteria, impalpable or highly suspect evidence, or misread NAC 213.590 by disregarding portions of the code or allowing the code to bring about absurd results.² The district court did not resolve Brass's objections.

We conclude that the district court abused its discretion by sentencing Brass without due consideration to his objections to the PSI, and

²We note NAC 213.590 was repealed in 2016.

therefore, Brass's sentence must be vacated and his case remanded for resentencing. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons

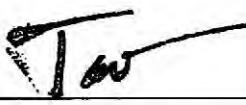

_____, J.
Bulla

TAO, J., dissenting:

In *Vasquez v. State*, Docket No. 79409-COA (Order Vacating Judgment and Remanding, August 12, 2020) (Tao, J., concurring), I explained at length that the Nevada Division of Parole and Probation appears to currently be operating in violation of Nevada law in the way in which it makes sentencing recommendations in PSIs, and I recommended that, until P&P complies with its statutory obligations, district court judges should ignore its recommendations when imposing sentence.

Here, the district court explained that it planned to ignore the sentencing recommendation that the Division of Parole and Probation submitted in the PSI, and would instead follow the agreed-upon sentence to which the parties stipulated as a condition of the guilty plea. It then did exactly that and imposed the exact sentence that the defendant negotiated.

In other words, the recommendation submitted by P&P was wholly irrelevant to the sentence imposed, and therefore the question of whether or not the district court "resolved" all of the defendant's objections to the contents of the PSI played no role whatsoever in the sentence imposed. I would therefore affirm.


_____, J.
Tao

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