

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONNY COOPER,

No. 37614

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

NOV 01 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted lewdness with a child under the age of 14 years. The district court sentenced appellant to serve 38 to 96 months in prison and imposed a special sentence of lifetime supervision to commence upon appellant's release from any term of parole or imprisonment.

Appellant contends that the district court abused its discretion at sentencing by relying on a psychosexual evaluation obtained by the Division of Parole and Probation, which was prepared by an individual not qualified under the relevant statutes and used defective testing methods. We conclude that appellant's contention lacks merit.

NRS 176.139(1) provides that the Division must arrange for a psychosexual evaluation as part of its presentence investigation and report regarding any defendant convicted of a sexual offense for which probation is permitted. NRS 176.139(2) provides that the evaluation must be conducted by "a person professionally qualified to conduct psychosexual

In arguing that the licensed clinical social worker who conducted the psychosexual evaluation was not qualified to do so, appellant relies in part on NRS 201.230. Subsection (2)(b) of the 1997 version of that statute provided that a person convicted of lewdness with a minor could not be released on probation unless "a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others."<sup>1</sup> While appellant is correct that a licensed clinical social worker would not be qualified under NRS 201.230, that provision is not applicable in this case as the legislature repealed it in 1997,<sup>2</sup> before appellant committed the instant offense.

The relevant provision defining the phrase "person professionally qualified to conduct psychosexual evaluations," as used in NRS 176.139(2), is NRS 176.133(1). It includes "a person who has received training in conducting psychosexual evaluations" and is "[a] social worker holding a master's degree in social work and licensed in this state as a clinical social worker."<sup>3</sup>

Our review of the record reveals that a qualified professional performed the psychosexual evaluation of appellant. The record in this case indicates that John S. Pacult, the individual who performed the psychosexual evaluation of appellant, is a licensed clinical social worker. As such, Mr. Pacult holds either a master's or a doctoral degree in social work.<sup>4</sup> There is nothing in the record to suggest that Mr. Pacult has not

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<sup>1</sup>1997 Nev. Stat., ch. 455, § 5, at 1722.

<sup>2</sup>1997 Nev. Stat., ch. 524, § 4, at 2502-03.

<sup>3</sup>NRS 176 133(1)(c)

received training in conducting psychosexual evaluations. It therefore appears that Mr. Pacult was "professionally qualified to conduct psychosexual evaluations" as required by NRS 176.139(2).

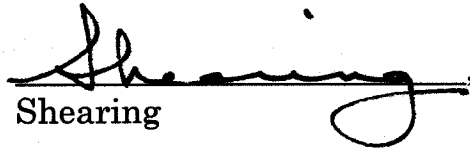
Appellant also contends that Mr. Pacult used a testing scale that is not recognized by persons in the field of psychology as a proper tool for evaluating the risk of recidivism. Appellant does not specify the testing scale used by Mr. Pacult that is not generally accepted as being within the standard of care for the evaluation of sex offenders.

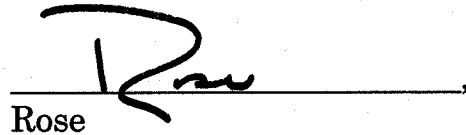
Our review of the record reveals that appellant has not demonstrated that Mr. Pacult used inappropriate diagnostic tools. Mr. Pacult used three risk assessment tools: the Vermont Assessment of Sex-Offender Risk ("VASOR"), the Rapid Risk Assessment of Sexual Offender Recidivism ("RRASOR"), and the Static 99. Mr. Pacult acknowledged the limitations of each test and diagnostic tools in general when attempting to assess the risk for sexual reoffense. In particular, Mr. Pacult explained that the VASOR should "be considered a research tool" even though "preliminary reliability and validity studies are encouraging." However, he did not rely entirely on that test; instead, he also used the RRASOR, which was used by the defense psychiatrist, and the Static 99, an improved version of the RRASOR. Given Mr. Pacult's thorough explanation of the benefits and limitations of the diagnostic tests he used, we conclude that appellant has failed to demonstrate that Mr. Pacult used diagnostic tools that are not "generally accepted as being within the standard of care for the evaluation of sex offenders."<sup>5</sup>


In sum, we conclude that the district court did not abuse its discretion in relying on the psychosexual evaluation prepared by Mr. Pacult because he was qualified to perform the evaluation under NRS

176.133 and 176.139 and used appropriate diagnostic tools. Accordingly,  
we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General  
Clark County District Attorney  
William S. Skupa  
Thomas J. Fitzpatrick  
Clark County Clerk