

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALETA ANNMARIE CUEVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81295-COA

FILED

MAY 20 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Aleta Annmarie Cueva appeals from a judgment of conviction, entered pursuant to a guilty plea, of robbery with the use of a deadly weapon and battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Cueva claims the district court abused its discretion at sentencing because the district court judge exhibited bias. A trial court's sentencing decisions are reviewed for an abuse of discretion. *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). "[A] judge is presumed to be impartial." *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). "[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show 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).

Cueva argues the district court judge closed his mind to all of the evidence by equating her actions with that of her codefendant, ignoring mitigating circumstances, attributing the arrangement of the incident solely to her when the evidence was not clear, and imposing a sentence in

excess of that recommended by the Division of Parole and Probation (Division) and harsher than what her codefendant received for the same charges. These arguments are largely disputes regarding the facts of the crime and do not demonstrate the district court closed its mind to the presentation of all of the evidence. Further, as acknowledged by Cueva in her opening brief, the district court is not required to follow the recommendation of the Division. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). And while a codefendant's sentence may be considered by the district court, *see Harte v. State*, 132 Nev. 410, 413, 373 P.3d 98, 101 (2016), Cueva fails to demonstrate her sentence, given her involvement in the crime, was disproportionate to her codefendant's sentence.¹ Therefore, we conclude the district court did not exhibit bias or otherwise abuse its discretion at sentencing.

Second, Cueva argues the district court judge abused his discretion at sentencing because he relied on impalpable or highly suspect evidence because the State presented argument that was contrary to the evidence. Cueva argues that the State misrepresented how she and the victim met, implying that she targeted him; argued that both Cueva and the codefendant were "pummeling" the victim; argued she preplanned the attack with her codefendant but that she also decided on her own to do this; argued she was part of a violent lifestyle; and argued that Cueva prevented the victim from leaving.

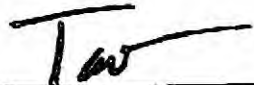
¹Cueva's codefendant was convicted of robbery with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and being a prohibited person in possession of a firearm. The codefendant was sentenced to an aggregate total of 11 to 45 years in prison.

As stated previously, the district court has wide discretion in its sentencing decision. *See Houk*, 103 Nev. at 664, 747 P.2d at 1379. We will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes “[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).

The sentence imposed is within the parameters provided by the relevant statutes. *See* NRS 193.165(1); NRS 200.380(2); NRS 200.481(e)(2). Further, the arguments made by the State were based on the evidence in the record and the testimony of the victim at sentencing. And, based on the reasoning given by the district court as to why it was sentencing Cueva, the district court understood the circumstances of the crime, Cueva’s involvement, and her lack of criminal history. Cueva fails to demonstrate that the district court relied on impalpable or highly suspect evidence. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Cueva. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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