

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WALLACE HUMPHREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37660

FILED

NOV 21 2002

ORDER OF AFFIRMANCE

JANET H. ALSON
CLERK OF SUPREME COURT
J. Richards
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted sexual assault on a minor under the age of 14 years (count I) and attempted lewdness with a child under the age of 14 years (count II). The district court sentenced appellant John Wallace Humphrey to serve a prison term of 36 to 120 months for count I and a consecutive prison term of 60 to 180 months for count II.

Humphrey first contends that his Fifth Amendment right against self-incrimination was violated when the district court, in determining his sentence, considered statements Humphrey made during the course of his psychosexual evaluation. Particularly, without having been advised of his right to remain silent, Humphrey told the social worker conducting the psychosexual interview that Humphrey had previously been accused of molesting his sister and his stepdaughter. We conclude that Humphrey's contention lacks merit. For the reasons set forth in Dzul v. State,¹ we conclude that Humphrey's right against self-incrimination was not violated.

¹118 Nev. ___, ___ P.3d ___ (Adv. Op. No. 71, October 31, 2002).

Humphrey next contends that the district court abused its discretion at sentencing by relying on the unsubstantiated allegations of prior molestations. We disagree.

"The sentencing judge has wide discretion in imposing a sentence, and that determination will not be overruled absent a showing of abuse of discretion. A sentencing court is privileged to consider facts and circumstances which would clearly not be admissible at trial."² "[T]his court will reverse a sentence if it is supported solely by impalpable and highly suspect evidence."³

Our review of the record reveals that Humphrey admitted during the psychosexual interview that he had previously been accused of molestation by his sister and stepdaughter. At sentencing, however, defense counsel specifically objected to the State's references to the prior allegations of molestation, informing the district court that Humphrey was merely "self-relating a history" and that the allegations were all denied by Humphrey and unsubstantiated. Even assuming that the assertions about prior molestations are unsubstantiated, we conclude that the district court's sentence is not supported solely by reliance on those references. We note that the sentence imposed was within the parameters provided by the relevant statutes.⁴ Moreover, there is no indication that the district court relied on the State's arguments about prior molestations when it imposed sentence, or that the district court did not accept

²Todd v. State, 113 Nev. 18, 25, 931 P.2d 721, 725 (1997) (quoting Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996)).


³Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

⁴See NRS 200.366; NRS 201.230; NRS 193.330(1)(a).

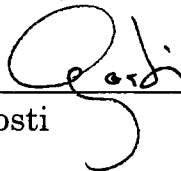
Humphrey's denial of those allegations.⁵ Accordingly, the district court did not abuse its discretion at sentencing.

Having considered Humphrey's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

⁵Cf. Goodson v. State, 98 Nev. 493, 495, 654 P.2d 1006, 1007 (1982) (holding that district court abused its discretion when it rejected defendant's denial of unsubstantiated allegations and imposed sentence based upon those allegations).