

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA RAY VASQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82037-COA

FILED

SEP 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joshua Ray Vasquez appeals from an amended judgment of conviction, entered pursuant to an *Alford*¹ plea, of battery with the use of a deadly weapon constituting domestic violence. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Vasquez argues the district court erred by denying his objections to errors contained within the presentence investigation report (PSI), which resulted in a lower probation success probability (PSP) score. Vasquez argues that the errors will negatively affect his prison classification and parole eligibility. “[A] PSI must not include information based on impalpable or highly suspect evidence.” *Gomez v. State*, 130 Nev. 404, 407, 324 P.3d 1226, 1228 (2014) (internal quotation marks omitted). A defendant may object to factual or methodological errors in sentencing

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

forms so long as he does so before sentencing. *Blankenship v. State*, 132 Nev. 500, 508, 375 P.3d 407, 412 (2016).

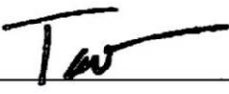
Vasquez argues the Division of Parole and Probation (Division) improperly deducted points from his PSP score for sophistication/premeditation. Vasquez claims the Division relied on an arrest report in which the victim indicated that Vasquez grabbed her from behind while in the hallway, choked her, and dragged her to a bedroom when she tried to leave the apartment. Vasquez contends this constitutes impalpable and highly suspect evidence because, at the preliminary hearing, the victim testified that Vasquez strangled her prior to going to the bathroom, then later grabbed her hair and dragged her to a bedroom when she tried to leave the apartment. The victim testified that, once they were in the bedroom, Vasquez kicked her, pulled her hair, and strangled her again. We are not persuaded that variations in the timing of the strangulation and/or the type of force Vasquez exerted to prevent the victim from leaving the apartment and to allow him to drag her to a bedroom constitutes impalpable or highly suspect evidence. Accordingly, we conclude Vasquez has not demonstrated the district court erred by denying his objection to the PSI on this ground.

Vasquez also argues the Division improperly deducted points from his PSP score for cooffender and attitude/offense. Vasquez does not allege that the factual information relied on by the Division was inaccurate. Rather, he disputes how the Division viewed those facts in determining his PSP scores. Vasquez thus fails to demonstrate that the PSI contained

impalpable or highly suspect evidence. Therefore, we conclude the district court did not err by denying Vasquez's objections, and we

ORDER the judgment of the conviction AFFIRMED.²


_____, 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

²Because we conclude that Vasquez has not demonstrated that his PSI contained impalpable or highly suspect evidence, we do not need to consider whether the alleged errors materially prejudiced his parole eligibility or prison classification. *See Gomez*, 130 Nev. at 408, 324 P.3d at 1229.