

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC ANTHONY SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83528-COA

**FILED**

**JAN 11 2022**

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

No. 83529-COA

ERIC ANTHONY SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83530-COA

ERIC ANTHONY SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

*ORDER OF AFFIRMANCE*

Eric Anthony Smith appeals from judgments of conviction entered pursuant to guilty pleas. In district court case number CR21-1572, Smith was convicted of unlawful taking of a vehicle without owner's consent (Docket No. 83528). In district court case number CR20-3934, Smith was convicted of possession of a controlled substance for the purpose of sale (Docket No. 83529). In district court case number CR20-3407, Smith was

convicted of possession of a controlled substance for the purpose of sale (Docket No. 83530). These cases were consolidated on appeal. See NRAP 3(b). Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Smith argues that the district court abused its discretion at sentencing because it improperly closed its mind to consideration of the available range of sentences. Smith contends the district court informed him that it would impose the maximum possible sentences if he failed to complete a presentence Salvation Army program. Smith asserts that statement demonstrates the district court refused to consider the full range of sentencing options when it sentenced him after Smith failed to complete the program.

The district court has wide discretion in its sentencing decision. See *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court “[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). Moreover, the “remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that 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).

The record reveals that, at the initial sentencing hearing, Smith requested a continuance of the imposition of sentence so that he could enter

a presentence Salvation Army program. The district court noted it would be beneficial to both Smith and the community if he were to decide to change his life and granted Smith's request for a continuance to allow him to enroll in the Salvation Army program. The district court informed Smith that it was giving him a chance to better himself but warned Smith that he would face the maximum sentences if he did not complete that program.

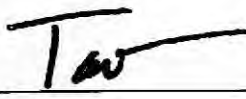
Smith subsequently absconded from the program and received a new charge of unlawful taking of a vehicle. He was detained and pleaded guilty to the new charge. The district court conducted a sentencing hearing for Smith's three cases and heard the arguments of the parties. The district court also listened to Smith's statement and agreed that Smith's situation was unfortunate. However, the district court noted that it decided to give Smith a chance to better himself through the Salvation Army program and that Smith decided to walk away from that program.

The record demonstrates that the district court heard and considered Smith's arguments and statement. Based on the record, Smith does not demonstrate that the district court closed its mind to the presentation of all of the evidence or improperly refused to consider the available potential sentences. The district court imposed consecutive sentences of 19 to 48 months in prison for the charges of possession of a controlled substance for the purpose of sale and imposed a concurrent sentence of 364 days in the county jail for the unlawful taking of a vehicle without owner's consent. The imposed sentences fall within the parameters of the relevant statutes, *see* NRS 176.035(1); NRS 193.130(1)(d); NRS 193.140; NRS 205.2715(1); NRS 453.337(2)(a), and Smith does not allege

that the district court relied on impalpable or highly suspect evidence. Therefore, we conclude that Smith fails to demonstrate that the district court abused its discretion when imposing his sentences. Accordingly, we

ORDER the judgments of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Scott N. Freeman, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk