

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAVON ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82540-COA

FILED

DEC 23 2021

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

ORDER OF AFFIRMANCE

Javon Robinson appeals from a second amended judgment of conviction for first-degree murder with the use of a deadly weapon, two counts of burglary while in possession of a deadly weapon, two counts of robbery with use of a deadly weapon, and conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

A jury found Robinson guilty of first-degree murder, as well as several other felonies.¹ Prior to sentencing, Robinson and the State stipulated to waiving the penalty phase, and the district court sentenced Robinson to an aggregate term of incarceration of forty-two years to life in prison, which included life for the first-degree murder conviction with the possibility of parole after ten years. Thereafter, Robinson appealed on several grounds, including that he was illegally sentenced on the first-degree murder conviction pursuant to NRS 200.030(4)² because he was

¹We do not recount the facts except as necessary to our disposition.

²NRS 200.030(4) provides in pertinent part:

A person convicted of murder of the first degree is guilty of a category A felony and shall be punished:

...

(b) By imprisonment in the state prison:

continued on next page...

sentenced to ten years to life in prison, which is outside the minimum statutory requirement of twenty years. On appeal, the Nevada Supreme Court affirmed in part, but vacated the sentence for the murder conviction, and remanded the matter to the district court for resentencing in compliance with NRS 200.030(4).

The district court then set a new sentencing hearing and Robinson submitted a sentencing memorandum in which he argued for life with a minimum parole eligibility of twenty years for the murder charge, but also for a reduction in the length of incarceration for the other crimes to account for the increase in the parole eligibility date for the murder charge. At the sentencing hearing, the State argued that the sentences for Robinson's other offenses should remain the same, and that the court should only increase the minimum prison time for the first-degree murder conviction from ten to twenty years as required pursuant to NRS 200.030(4). The court then asked Robinson if he would like to speak, to which Robinson responded in the negative. Robinson's counsel then argued that while the minimum sentence for the first-degree murder conviction should be increased to comply with the statute, the sentences for Robinson's other offenses should in turn be decreased, so as to keep Robinson's original minimum aggregate sentence of forty-two years unchanged. Further,

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

Robinson's counsel asked the court to consider mitigating circumstances, such as Robinson's family history and difficult upbringing.

After hearing the parties' arguments, the district court agreed with the State to maintain the original sentences imposed for Robinson's other offenses, while increasing the parole eligibility to twenty years for Robinson's first-degree murder conviction to comport with NRS 200.030(4). This resulted in an increase of Robinson's minimum aggregate sentence from forty-two to fifty-two years in prison.

On appeal, Robinson argues that the district court erred by not conducting a new sentencing hearing as contemplated by the supreme court's order, as the district court "made no findings, . . . did not elicit potentially mitigating evidence[,] and simply changed the one sentence that had been found illegal by this Court." Conversely, the State argues that the district court conducted a proper sentencing hearing pursuant to NRS 176.015(2), as the court gave both Robinson and his attorney an opportunity to speak on Robinson's behalf, and imposed sentences within the statutory range. We agree with the State and therefore affirm.

The district court is afforded "wide discretion in its sentencing decision." *Allred v. State*, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). "Nevertheless, this discretion is not limitless. When imposing a sentence, a district court may not abuse its discretion." *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

During sentencing, the district court may "consider facts and circumstances which clearly would not be admissible at trial so 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.” *Wood v. State*, 111 Nev. 428, 430, 892 P.2d 944, 945 (1995); see *Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976). But before imposing a sentence, the district court must

(a) [a]fford counsel an opportunity to speak on behalf of the defendant; and

(b) [a]ddress the defendant personally and ask the defendant if:

(1) [t]he defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment.³

NRS 176.015(2)(a) & (b)(1).

On remand from the supreme court, the district court properly conducted the resentencing pursuant to NRS 176.015(2), and properly sentenced Robinson pursuant to NRS 200.030(4) for his first-degree murder conviction. See *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (concluding that a “sentence within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience” (internal quotation marks omitted)). Robinson’s contention that the district court failed to give him an individualized sentencing hearing is belied by the record. The court gave Robinson an opportunity to speak on his own behalf pursuant to NRS 176.015(2)(b); however, Robinson declined. Additionally, the district court heard extensive arguments from Robinson’s attorney, who contended that

³Neither party raises NRS 176.015(2)(b)(2) as an issue on appeal; therefore, NRS 176.015(2)(b)(2) is not discussed herein.

Robinson's sentencing should remain at the minimum aggregate of forty-two years based on several mitigating factors, including Robinson's troubled upbringing.

Based on the foregoing, Robinson fails to articulate how the district court violated the sentencing requirements of NRS 176.015(2). Indeed, Robinson failed to mention the requirements of NRS 176.015 in his opening brief, and did not provide this court with a reply brief responding to the extensive arguments in the State's answering brief that the district court complied with NRS 176.015. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge . . . constitutes a clear concession by appellants that there is merit in respondents' position"). In fact, Robinson fails to cite to any authority whatsoever to support his contention that the district court abused its discretion in sentencing him under NRS 176.015. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.")

Robinson also argues that during resentencing the district court frustrated the Nevada Supreme Court's order because the court failed to decrease the minimum sentences for his other offenses in order to maintain the minimum aggregate of forty-two years. However, the supreme court's order specified that on remand

while the court *may* decrease the sentence imposed for any of the other offenses to the extent permitted by the pertinent statutes or choose to run the sentence for some or all of the other offenses concurrently to achieve an aggregate minimum

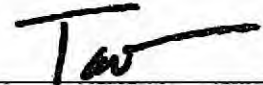
sentence that is the same or less than the original *aggregate* minimum sentence, the district court cannot *increase* the sentence for any of the offenses other than first-degree murder.

Robinson v. State, No. 76979, 2020 WL 1903188, at *3 (Nev. April 16, 2020) (Order Affirming in Part, Vacating in Part, and Remanding) (emphasis added).

Therefore, while the supreme court mandated resentencing as to Robinson's first-degree murder conviction pursuant to NRS 200.030(4), by using the word "may," it left the district court with the discretion to decrease the minimum sentences for Robinson's other offenses in order to maintain the same aggregate minimum. Ultimately, the district court exercised its discretion and decided not to reduce the minimum sentences for Robinson's other offenses, and only increased the minimum sentence for Robinson's first-degree murder conviction as required by NRS 200.030(4), in compliance with the supreme court's order. Thus, the district court did not abuse its discretion when resentencing Robinson. Therefore, we

ORDER the second amended judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
The Law Firm of C. Benjamin Scroggins, Esq.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk