

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA ALEXANDER DURAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

✓ No. 83711-COA

**FILED**

APR 20 2022

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

JOSHUA ALEXANDER DURAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83712-COA

*ORDER OF AFFIRMANCE*

Joshua Alexander Duran appeals from his judgments of conviction. In Docket No. 83711, Duran was convicted, pursuant to a guilty plea, of battery causing substantial bodily harm. In Docket No. 83712, Duran was convicted, pursuant to a guilty plea, of burglary of a business. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Duran argues the district court abused its discretion at sentencing because the district court did not state it considered the mitigating evidence presented at sentencing and because the district court imposed consecutive sentences instead of probation. Specifically, Duran claims the district court did not consider his mental health issues at sentencing. Further, Duran claims the district court seemed to contradict itself between the bail hearing, where it allowed Duran to be considered for treatment, and the sentencing hearing, where it imposed prison terms.


The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). It is within the district court's discretion to impose consecutive sentences, *see* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015), and to grant probation, *see* NRS 176A.100(1)(c). Generally, this court will refrain from interfering with the sentence imposed "[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).

Duran's consecutive sentences of 18 to 60 months and 12 to 36 months in prison are within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(c); NRS 200.481(2)(b); NRS 205.060(2)(c), and Duran does not allege that the district court relied on impalpable or highly suspect evidence. Contrary to Duran's claim that the district court did not state it considered mitigating evidence, the district court stated that it spent a lot of time on his case the night before sentencing, had reviewed the mental health evaluation, and considered the information provided by Duran and his counsel. Further, the district court specifically stated at the bail hearing that it would still consider a prison sentence even though the district court was giving Duran the opportunity for treatment prior to sentencing. Considering Duran's past failures on probation and parole and the mental health court program's declination to allow Duran to participate, we conclude the district court did not abuse its discretion by declining to suspend the sentence and place Duran on probation. Further, given the nature of the crimes and the fact that he committed the burglary while out

on release on the battery, we conclude the district court did not abuse its discretion by imposing consecutive sentences. Accordingly, we

ORDER the judgments of conviction AFFIRMED.

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

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

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

cc: Hon. Lynne K. Simons, District Judge  
Washoe County Alternate Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk