

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ENRIQUE VILLEGAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84440-COA

FILED

OCT 12 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Enrique Villegas appeals from a judgment of conviction, entered pursuant to a guilty plea, of battery by strangulation and battery constituting domestic violence. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

On appeal, Villegas challenges the sentencing process. He claims the district court erred by considering the victim-impact statements at sentencing. A victim has the right to be heard at sentencing. *Aparicio v. State*, 137 Nev., Adv. Op. 62, 496 P.3d 592, 594 (2021). “Few limitations are imposed on a judge’s right to consider evidence in imposing a sentence.” *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). “A district court is vested with wide discretion regarding sentencing, but this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence.” *Id.* Where, as here, the defendant objects to the admission of victim-impact statements, we review for harmless error. *See Dieudonne v. State*, 127 Nev. 1, 9 n.3, 245 P.3d 1202, 1207 n.3 (2011).

First, Villegas claims the district court erred by considering the victim-impact statements because they exceeded the scope of those allowed by NRS 176.015(3)(b). Villegas contends the statements improperly centered around the death of the victim's brother and not the offenses for which he was convicted. At sentencing, a victim is afforded an opportunity to "[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution." NRS 176.015(3)(b). This includes allowing a victim to express views regarding the defendant's general character, such as "some reasonable discussion of prior acts by the defendant." *Buschauer v. State*, 106 Nev. 890, 893, 804 P.2d 1046, 1048 (1990).

Here, Villegas fails to explain how the statements were an unreasonable discussion of his actions where he has disputed neither that he killed the victim's brother nor that the death occurred as a result of a confrontation arising from the domestic violence for which Villegas was convicted in this case.¹ Therefore, we conclude Villegas fails to demonstrate the statements exceeded the scope allowed by NRS 176.015(3)(b) and, in turn, that the district court abused its discretion.

Second, Villegas claims the district court erred by considering statements authored by extended family members without first determining whether they were "victims" as required by the two-step analysis outlined in *Aparicio*. Villegas also claims the district court erred

¹Villegas claimed he acted in self-defense and was cleared of wrongdoing by law enforcement in the death of the victim's brother.

by considering these statements because the family members were not victims and their statements were not relevant and reliable.

Upon objection to the admission of a victim-impact statement, a district court must first examine each statement and determine whether it is from a victim. *Aparicio*, 137 Nev., Adv. Op. 62, 496 P.3d at 596. Here, the district court erred by failing to affirmatively determine whether each of these victim-impact statements was from a victim.

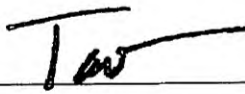
However, a court may still examine statements that are not from victims if it finds that the statements “are relevant and reliable.” *Id.* The statements here focused on the death of the victim’s brother, and the district court found “specifically that all of the letters . . . are relevant and reliable.” This court has already determined the statements were substantively within the scope allowed by NRS 176.015(3)(b), and it has previously observed that the factual basis for the victim’s brother’s death is not in dispute. Accordingly, Villegas fails to demonstrate that the statements were not relevant and reliable. Further, at sentencing, the district court stated that it would sentence Villegas for his behavior and conduct toward the victim and not for his conduct toward the brother, despite being sympathetic to the family members and cognizant of their loss. Therefore, we conclude the district court did not abuse its discretion by considering the victim-impact statements.²

²Villegas contends consideration of the statements was not harmless because they contained impalpable or highly suspect evidence in the form of discussions about the victim’s brother’s death and unfounded and disparaging remarks about Villegas. For the reasons discussed previously,

For the foregoing reasons, we conclude Villegas is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

Villegas fails to demonstrate the information regarding the victim's brother's death constitutes palpable or highly suspect evidence. And he fails to identify the allegedly unfounded or disparaging remarks. Therefore, he fails to demonstrate he is entitled to relief on this ground. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).