

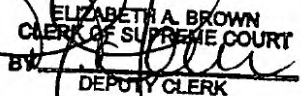
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRISTIAN JAVIER GUERRERO-MENA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84342-COA

FILED

FEB 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cristian Javier Guerrero-Mena appeals from a judgment of conviction entered pursuant to a guilty plea of eluding a police officer and felon in possession of a firearm. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Guerrero-Mena argues that the district court abused its discretion at sentencing because it did not follow the joint recommendation of the parties and his punishment did not fit his crime or him as an individual. Guerrero-Mena also contends that the district court exhibited bias against him because it closed its mind to the presentation of all of the evidence by focusing on his prior conviction and his use of a weapon during the commission of that offense instead of Guerrero-Mena's mitigation evidence.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes "[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); see *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). “In addition, 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*, 114 Nev. at 1283, 968 P.2d at 1171.

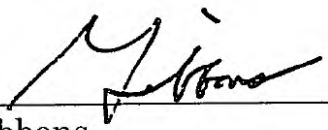
At the sentencing hearing, the district court listened to the arguments of the parties and both parties recommended that it impose concurrent terms. Guerrero-Mena apologized for his actions that led to the offenses and informed the district court that he helped his brother leave the gang lifestyle, he recently had a daughter, and that he was attempting to improve his employment prospects. Guerrero-Mena’s counsel also informed the district court that Guerrero-Mena had a difficult childhood, suffered from mental health issues, and only had the firearm to protect himself and his family.

The district court subsequently explained that it considered Guerrero-Mena’s mitigation information and found it to be substantial. However, the district court found that the mitigation information did not outweigh Guerrero-Mena’s prior conviction of voluntary manslaughter and his decision to again be involved with a firearm. In addition, the district court explained that it concluded Guerrero-Mena’s decision to have a firearm endangers the community in an unacceptable manner. The district court also stated that it had no animus toward Guerrero-Mena but rather found the situation to be very sad. The district court ultimately imposed a sentence of 28 to 72 months for eluding a police officer and a sentence of 28 to 72 months for felon in possession of a firearm. The district court also

explained that it decided to impose the sentences consecutively due to Guerrero-Mena's continued use of firearms. The aggregate sentence amounted to 56 months to 144 months in prison.

The sentence imposed is within the parameters provided by the relevant statutes. *See* NRS 176.035(1); NRS 202.360(1); NRS 484B.550(3). And Guerrero-Mena does not allege that the district court relied on palpable or highly suspect evidence. In addition, Guerrero-Mena does not demonstrate that the district court erred by declining to follow the recommendation of the parties. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). Moreover, Guerrero-Mena does not demonstrate that the district court was improperly biased against him because the record shows that the district court reviewed and considered Guerrero-Mena's arguments and mitigation information at the sentencing hearing, and therefore, he does not demonstrate that the district court closed its mind to the presentation of all of the evidence. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Guerrero-Mena. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk