


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH ANDRE HUNTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85046-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Andre Hunter appeals from a judgment of conviction, entered pursuant to a jury verdict, of battery constituting domestic violence, third offense; possession of a schedule II controlled substance less than 14 grams, third or subsequent offense; and four counts of preventing or dissuading a witness from testifying. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Hunter argues the district court erred by failing to apply his presentence credit to the minimum sentences imposed on his felony counts. The district court imposed consecutive prison sentences of 28 to 72 months for the battery count and 15 to 40 months for the possession count with no credit for time served, and it calculated the aggregate sentence that Hunter must serve in prison. The district court imposed 364-day county jail terms for the remaining counts, all to be served concurrently to each other and consecutively to the sentences imposed for the felony counts. The district court applied Hunter's 214 days of presentence credit only to the county jail sentences.

Based on the sentence structure imposed by the district court, Hunter's ultimate sentence is the combination of his consecutive prison and

jail sentences. And the district court applied Hunter's presentence confinement credit to his jail sentences, leaving nothing left to apply to his consecutive prison sentences. *See Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (holding that an offender is entitled to have all of his presentence time served credited toward his ultimate sentence); *Mays v. Eighth Judicial Dist. Court*, 111 Nev. 1172, 1176, 901 P.2d 639, 642 (1995) (providing that presentence confinement may be split among two or more consecutive sentences). Accordingly, we conclude the district court did not err by failing to apply Hunter's presentence credit to his felony counts and Hunter is not entitled to relief based on this claim.

Hunter also argues the district court abused its discretion by sentencing him to consecutive felony 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). 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).

The sentences imposed are within the parameters provided by the relevant statutes. *See* NRS 176.035(1); NRS 193.140; NRS 199.230(2); NRS 200.485(1)(c); NRS 453.336(2)(b). And Hunter does not allege that those statutes are unconstitutional or that the district court relied on impalpable or highly suspect evidence. Rather, Hunter first argues that the district court failed to consider mitigating information. Hunter contends the court should have considered that the victim failed to identify Hunter

during trial and that Hunter's battery count was only a felony because of his criminal history and not the conduct alleged. The district court presided over Hunter's trial and was therefore aware of the evidence that was and was not presented at trial. Further, the district court listened to Hunter's allocution and the arguments of the parties prior to imposing Hunter's sentences. The parties' arguments included discussion of Hunter's criminal history, substance abuse history, the victim's statements regarding Hunter's culpability, and whether Hunter's domestic battery count was the result of felonious or misdemeanor conduct. Based on these circumstances, Hunter has not demonstrated that the district court failed to consider the mitigating information.

Hunter also argues the district court sentenced him more harshly because he exercised his right to trial. However, the district court stated it would never punish anyone for going to trial and that Hunter's criminal history and the facts of the offense warranted the same sentence whether he went to trial or pleaded guilty. Hunter has not demonstrated that the district court sentenced him more harshly because he exercised his right to a jury trial. And having considered the sentences and the crimes, we conclude the district court did not abuse its discretion at sentencing.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk