

IN THE SUPREME COURT OF THE STATE OF NEVADA

LENNY MICHAEL GALLEGOS,

No. 37982

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

DEC 04 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of unlawful sale of a controlled substance. The district court sentenced appellant to a prison term of 12 to 36 months.

Appellant's sole contention is that the district court abused its discretion at sentencing by considering information supported only by impalpable or highly suspect evidence.<sup>1</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> A sentencing proceeding is not a second trial, and the sentencing court is privileged to consider facts and circumstances that would not be admissible at trial.<sup>3</sup>

In the instant case, appellant argues that information contained in the presentence investigation report was improperly considered by the district court. The information in question was a statement by appellant's probation officer in a previous case that appellant had tested positive for the use of narcotics on numerous occasions and that several violation reports were filed. At sentencing, however, appellant produced evidence that only two violation reports were filed, and of those, one was dismissed and the other was resolved. Evidence was also produced at sentencing that showed appellant had had only one positive test, which was the result of medication administered by

<sup>1</sup>See Lloyd v. State, 94 Nev. 167, 576 P.2d 740 (1978).

<sup>2</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

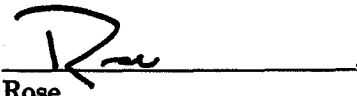
<sup>3</sup>Silks v. State, 92 Nev. 91, 93-94, 545 P.2d 1159, 1161 (1976).

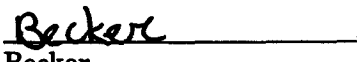
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a dentist. Finally, appellant was able to clarify at sentencing that he had been honorably discharged from his previous probation. Even assuming that the information in the presentence investigation report was impalpable or highly suspect, there is no indication that the district court relied on it in imposing sentence. Instead, after appellant refuted the information in question, the discussion at sentencing focused on the seriousness of the instant offense. Accordingly, we conclude that appellant's contention is without merit, and we

ORDER the judgment of conviction AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Steven R. Kosach, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Kenneth E. Lyon III  
Washoe County Clerk