


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA THOMAS BUCKINGHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85800-COA

FILED

SEP 18 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joshua Thomas Buckingham appeals from a judgment of conviction, entered pursuant to a guilty plea, of felony reckless driving. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Buckingham argues the district court abused its discretion at sentencing. 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).

First, Buckingham claims the district court was biased because it closed its mind to the presentation of all the mitigation evidence related to Buckingham’s mental health as demonstrated by the court’s remark that justice demanded prison for Buckingham’s actions. “[A] judge’s remarks made in the context of a court proceeding may be indicative of prejudice or

improper bias if they demonstrate ‘the judge has closed his or her mind to the presentation of all the evidence.’” *State v. Eighth Judicial Dist. Court (Schneider)*, 132 Nev. 600, 604, 376 P.3d 798, 801 (2016) (quoting *Cameron*, 114 Nev. at 1283, 968 P.2d at 1171).

The remark occurred at the end of the sentencing hearing, just prior to the imposition of sentence. By that point, the district court had already received numerous documents that discussed Buckingham’s mental health, including the sentencing memorandum, character letters, and a forensic psychological evaluation that the court specifically stated it had read. In addition, the court had listened to the argument of the parties, including argument related to Buckingham’s mental health and Buckingham’s allocution wherein he discussed his mental health issues. In light of these circumstances, we conclude Buckingham failed to demonstrate the district court was biased.

Second, Buckingham claims the district court relied on impalpable and highly suspect evidence as demonstrated by the court’s remark that it hoped Buckingham continued his “recovery.” Buckingham contends the district court was acting under the misconception that the case was about substance abuse instead of a mental health episode, and that the belief was “perhaps aided” by comments made by the State during sentencing that Buckingham admitting to drinking a beer the night before the crash “in addition to potentially smoking marijuana.”

In addition to the comments described above, the State advised the court that no THC was found in Buckingham’s blood and the amount of alcohol in his blood was not substantial or impairing. Buckingham does not argue that the statements made by the State were inaccurate and otherwise fails to demonstrate that they constituted impalpable or highly suspect

evidence. Moreover, the court received substantial evidence about how Buckingham was addressing his mental health issues after the offense. Buckingham's counsel described the process as a "journey." In light of these circumstances, Buckingham fails to demonstrate that the court's remark was indicative of its misconception that Buckingham suffered from substance abuse as opposed to mental health issues.

Finally, Buckingham's sentence of 24 to 72 months in prison was within the parameters provided by the relevant statute. See NRS 484B.653(9). We therefore conclude the district court did not abuse its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk