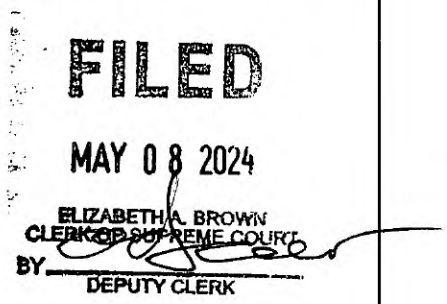
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IAN TEADOR UNGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87329-COA




*ORDER OF AFFIRMANCE*

Ian Teador Unger appeals from a judgment of conviction, entered pursuant to a guilty plea, of luring or attempting to lure a child with the use of computer technology to engage in sexual conduct. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

First, Unger seeks a declaration that a defendant who pleads guilty to luring is eligible for deferral under NRS 176.211 where the State does not explicitly agree to deferral but does agree that the defendant may argue for an appropriate sentence. This court observes a "firm jurisdictional bar on advisory opinions." *Echevarria v. State*, 137 Nev. 486, 490, 495 P.3d 471, 475 (2021). We consider only actual controversies resolvable by enforceable judgments—once the controversy is gone, the case is moot. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (collecting cases). Here, the district court allowed Unger to argue for deferral. Thus, there is no controversy for this court to decide, and any opinion we would render would be merely advisory. Therefore, we decline to consider this claim.

Second, Unger argues that his plea was involuntary because while the plea agreement informed him that he was eligible for probation,

the district court stated at sentencing that it would not consider probation for this type of crime. He claims the plea agreement did not correctly inform him about the possible penalties because the district court was not going to consider probation.

Generally, this court will not consider a challenge to the validity of a guilty plea on direct appeal from a judgment of conviction.[1] *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance unless the error clearly appears from the record. *Smith*, 110 Nev. at 1010 n.1, 879 P.2d at 61 n.1. Here, Unger did not raise his claim in the district court in the first instance. However, Unger's alleged error clearly appears in the record and does not require any additional factual development. Therefore, we will consider it on appeal.

Unger was correctly informed in the guilty plea agreement that probation was a possible sentence and that sentencing was up to the district court judge. That the district court judge may not feel probation is appropriate for this type of crime did not demonstrate that the plea was involuntarily entered. *Cf. Sierra v. State*, 100 Nev. 614, 616, 691 P.2d 431, 432-33 (1984) (holding a plea was involuntarily entered when the defendant was not advised of the possible range of punishments allowed by statute). Therefore, we conclude that Unger is not entitled to relief on this claim.

---

[1]The State argues that this claim should not be considered because a postconviction petition for a writ of habeas corpus is the exclusive remedy for a post-sentence challenge to a guilty plea. *See Harris v. State*, 130 Nev. 435, 329 P.3d 619 (2014). However, an appeal from a judgment of conviction is an exception to the exclusive remedy language in NRS 34.724(2)(b). *Id.* at 439, 329 P.3d at 622.

Third, Unger argues the district court exhibited bias against him because the district court closed its mind to the mitigation evidence; stated several times that if you try having sex with a 14-year-old, you are going to prison; and stated that if the community was polled it would support a prison sentence for this type of crime.

Unger has not demonstrated that the district court was biased against him. The record does not indicate that the district court's decision was based on knowledge acquired outside of the proceedings, and the decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). The judge stated he considered the arguments of the parties and the mitigation evidence provided. The judge relied on the facts of the crime to determine that a prison term was an appropriate sentence. Therefore, we conclude that Unger is not entitled to relief on this claim.

Finally, Unger claims the district court abused its discretion at sentencing because it relied on impalpable and highly suspect evidence. Specifically, Unger claims the district court's statement regarding polling the community was impalpable and highly suspect evidence. "A district court is vested with wide discretion regarding sentencing," and "[f]ew

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). However, "this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Id.*

The district court's statement showed the court "was offended by the facts of the crime committed rather than prejudiced by information or accusations founded on facts supported only by impalpable and highly suspect evidence." *Alfaro v. State*, 139 Nev., Adv. Op. 24, 534 P.3d 138, 151-52 (2023) (internal citations and quotation marks omitted). Further, even assuming this statement was based on impalpable and highly suspect evidence, the district court's sentencing decision was not based solely on its belief that the community would support a prison sentence. Specifically, the district court based its sentencing decision of 19 to 60 months in prison on the facts of the crime. The district court found that Unger had several opportunities to not go through with the crime and that he minimized his culpability. Therefore, Unger fails to demonstrate that the district court abused its discretion by relying solely on impalpable or highly suspect evidence, and we conclude that Unger is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk