

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL CARMEN SPANISH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87937-COA

**FILED**

AUG 15 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Michael Carmen Spanish appeals from a judgment of conviction, entered pursuant to a guilty plea, of utter, or possession with intent to utter, a fictitious bill, note, or check. First Judicial District Court, Carson City; James Todd Russell, Judge.

Spanish contends that the district court abused its discretion by granting him a term of probation rather than a diversion program under NRS 176A.240.<sup>1</sup> With limited exceptions inapplicable here, deferring judgment is left to the discretion of the district court. NRS 176A.240(1). The sentencing judge has wide discretion in imposing a sentence, *see Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and this court will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information


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<sup>1</sup>NRS 176A.240(1) permits the district court to place in a treatment program any “defendant who suffers from a substance use disorder” and who “tenders a plea of guilty . . . [to] any offense for which the suspension of sentence or the granting of probation is not prohibited by statute,” “[e]xcept as otherwise provided in” NRS 176.211(3)(a)(1).

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).

Spanish argues that the district court should have granted diversion because otherwise, he may lose his employment and thus his ability to pay restitution. However, Spanish agreed to pay restitution as part of his plea agreement, and he does not argue that his sentence was based on impalpable or highly suspect evidence. *Id.*

Spanish also contends that the district court erroneously found that he did not "earn" diversion despite his arguments to the contrary. At the sentencing hearing, both Spanish and the State argued their respective positions with regard to Spanish's request for diversion, including Spanish's criminal history, prior opportunities for diversion and drug treatment, and current participation in a treatment program. As noted above, the decision of whether to defer judgment is left to the sound discretion of the trial court. NRS 176A.240(1). Having considered the sentence and the offense, we conclude that the district court did not abuse its discretion by placing Spanish on probation rather than granting him diversion. Accordingly, we ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. James Todd Russell, District Judge  
Carson City Public Defender  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk