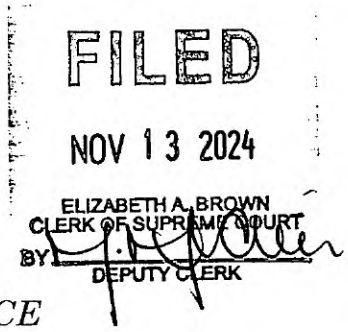
IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANTELL NOHEA'LOKELANI POGTIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88400



ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, for attempted assault with a deadly weapon. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Appellant Shantell Pogtis argues that the district court abused its discretion by denying the motion to strike misdemeanor traffic convictions from the presentence investigation report (PSI). *See Sasser v. State*, 130 Nev. 387, 393, 324 P.3d 1221, 1225 (2014) (reviewing the district court's decision to strike information from a PSI for an abuse of discretion). Pogtis contends that because of this, the district court further abused its discretion when sentencing Pogtis because the district court relied on impalpable or highly suspect evidence. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (reviewing the district court's sentencing decision for an abuse of discretion).

Pogtis argues that the misdemeanor traffic convictions should have been removed from the PSI because the 81st Legislature made traffic violations civil in nature, 2021 Nev. Stat., ch. 506, and this change should be applied retroactively. This argument is without merit. Pogtis's traffic convictions occurred years before the relevant legislation was enacted and

were criminal misdemeanors when they were committed. *See* 2021 Nev. Stat., ch. 506, § 81, at 3354 (providing an effective date of Jan. 1, 2023). Additionally, the crime that Pogtis was sentenced on also occurred before the relevant legislation became effective. "[T]he proper penalty is the penalty in effect at the time of the commission of the offense," *State v. Second Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008), and in Nevada, "changes in statutes are presumed to operate prospectively absent clear legislative intent to apply a statute retroactively," *Castillo v. State*, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994), *disapproved of on other grounds by Wood v. State*, 111 Nev. 428, 892 P.2d 944 (1995). Whether a statute operates prospectively or retrospectively is a question of statutory construction, which this court reviews de novo. *Williams v. Nev., Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017).

When a statute is facially clear, we do not look beyond the statute itself when determining its meaning. *Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001). Nothing in the text of the added statutes concerning civil infraction citations demonstrates that the Legislature clearly manifested an intent for them to apply retroactively, *see* NRS 484A.703-.705, and Pogtis concedes that NRS 484A.703 has an effective date of January 1, 2023, well after the traffic convictions at issue. *See Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 155, 179 P.3d 542, 553 (2008) ("[W]hen the Legislature intends retroactive application, it is capable of stating so clearly.").

Moreover, the Legislature specified that certain aspects of the legislation were to apply retroactively. For example, the legislation cancels outstanding bench warrants issued for persons who failed to appear in court

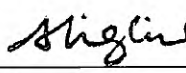
in response to a traffic citation issued before January 1, 2023, and directs the Central Repository for Nevada Records of Criminal History to remove records of bench warrants issued for persons who failed to appear in court in response to a traffic citation issued before January 1, 2023, from its database. *See* 2021 Nev. Stat., ch. 506, § 80, at 3353-54. The Legislature, however, did not express an intent to reclassify misdemeanor traffic convictions that occurred before January 1, 2023, or to have them removed from an individual's criminal history record. This dispels any argument that the Legislature intended the reclassification of traffic misdemeanors as civil infractions to apply retroactively. *See Rural Tel. Co. v. Pub. Utilities Comm'n*, 133 Nev. 387, 389, 398 P.3d 909, 911 (2017) ("This court follows the principle of statutory construction that the mention of one thing implies the exclusion of another." (internal quotation marks omitted)). Thus, Pogtis's misdemeanor traffic convictions were properly included in the PSI, and the district court did not abuse its discretion by denying Pogtis's motion to strike them.

Even if Pogtis were correct and the district court erred in denying the motion to strike the traffic convictions from the PSI, the traffic convictions would still not constitute impalpable or highly suspect evidence. Pogtis does not dispute that the traffic offenses occurred, nor are they "bald assertion[s], unsupported by any evidence whatsoever." *Goodson v. State*, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982). And regardless of whether the traffic offenses are considered civil infractions or misdemeanor convictions, they provided the district court with relevant information into Pogtis's life and characteristics. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) ("Possession of the fullest information possible concerning a defendant's life and characteristics is essential to the

sentencing judge's task of determining the type and extent of punishment."). The district court is "free to consider information extraneous to the presentencing report" and even "facts and circumstances that would not be admissible at trial." *Id.*

Pogtis's challenge to the sentence also lacks merit because the district court's sentencing decision was not based *solely* on the misdemeanor traffic convictions. *See id.* ("[T]his court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence."). The district court repeatedly stated that it was not concerned about Pogtis's misdemeanor convictions. Rather, the court was concerned about Pogtis's history of noncompliance, which continued in this case, where Pogtis failed to appear for two years until arrested on a bench warrant. Thus, Pogtis's sentence was not based solely on the misdemeanor traffic convictions. The sentence was also within the available sentencing range. *See* NRS 200.471; NRS 193.330; NRS 195.020. Therefore, the district court did not abuse its discretion in sentencing Pogtis.[1] Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Stiglich

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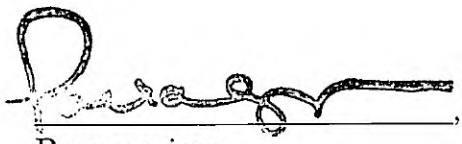

_____, J.
Parraguirre

[1]To the extent Pogtis attempts to incorporate by reference the arguments set forth in her motion to the district court, this is improper. *See* NRAP 28(e)(2) ("Parties must not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal.").

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk