

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD PATRICK FRASER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89356-COA

**FILED**

APR 09 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Richard Patrick Fraser appeals from a judgment of conviction, entered pursuant to a guilty plea, of luring a child with the intent to engage in sexual conduct through the use of a computer. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Fraser claims the district court abused its discretion by denying his motion to strike portions of the presentence investigation report (PSI). Fraser argues the PSI improperly included information regarding his juvenile conduct and related adjudication. He argues the information was based on highly suspect and impalpable evidence because the PSI writer did not have access to his juvenile records and the information was provided by Fraser's sisters, who were the mothers of Fraser's previous victims.

The argument Fraser presents on appeal is different than what he presented to the district court.<sup>1</sup> An appellant "cannot change [the] theory

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<sup>1</sup>Below, Fraser argued: (1) that NRS 62H.170(1)(a) states sealed juvenile adjudications are deemed to never have occurred, that the sheriff's office violated his rights by including information related to the prior adjudications in the police reports, and that this information should not have been presented to the court in the PSI; (2) that a juvenile adjudication is not the same as a criminal conviction and should not have been included;

underlying an assignment of error on appeal.” *Ford v. Warden*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995).

Even were we to review Fraser’s claim for plain error as we would an otherwise forfeited error, Fraser fails to demonstrate the PSI contained information based on impalpable or highly suspect evidence. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (reviewing otherwise forfeited error for plain error and outlining the elements of plain error review); *Sasser v. State*, 130 Nev. 387, 392, 324 P.3d 1221, 124 (2014) (“A defendant’s PSI must not include information based on impalpable or highly suspect evidence.” (internal quotation marks omitted)). The PSI included information indicating Fraser had molested his young nieces and nephews when he was a juvenile and had been adjudicated a delinquent for this conduct. This information was provided to the sheriff’s office by Fraser’s sisters, who were the mothers of Fraser’s prior victims, and was largely corroborated by Fraser’s admissions during his psychosexual evaluation that he had molested his nieces and nephews as a juvenile and had been adjudicated a delinquent for that conduct.<sup>2</sup> Thus, Fraser fails to

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(3) that information regarding Fraser’s conduct as a juvenile was included in the offense synopsis and not the criminal history portion of the PSI; and (4) that the information was improper victim impact testimony. Fraser does not raise these claims on appeal and we do not consider them.

<sup>2</sup>Fraser appears to challenge the use of his prior juvenile conduct in the psychosexual evaluation. Fraser did not object to this information below. Because the information used in the psychosexual evaluation was self-reported by Fraser, Fraser fails to demonstrate plain error in this regard.

Fraser also appears to argue that the information regarding his juvenile conduct did not fit within the criteria set forth in NAC 213.590. We find this argument unavailing as NAC 213.590 was repealed in 2016.

demonstrate the PSI contained information that was based on impalpable or highly suspect evidence. *See Zana v. State*, 125 Nev. 541, 545-46, 216 P.3d 244, 247 (2009) (noting a sealing order erases the official record of an individual's involvement with the criminal justice system, "not his actual conduct and certainly not his conduct's effect on others"). Accordingly, we conclude Fraser has not demonstrated the district court plainly erred by denying his motion to strike.<sup>3</sup>

Fraser also claims the district court abused its discretion at sentencing because it relied on impalpable and highly suspect evidence. Specifically, he argues his juvenile conduct was impalpable and highly suspect evidence because it was not supported by his juvenile records. 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).


Fraser's sentence of 48 to 120 months' imprisonment is within the parameters provided by the relevant statutes. *See* NRS 201.560(4)(a). And, as stated above, Fraser does not demonstrate that the information

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<sup>3</sup>We note that Fraser failed to include the district court's order denying his motion to strike. "The burden to make a proper appellate record rests on appellant." *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); *see also* NRAP 30(b)(3).

regarding his conduct as a juvenile was based on impalpable or highly suspect evidence. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Fraser. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Thomas W. Gregory, District Judge  
Brown Law Office  
Attorney General/Carson City  
Douglas County District Attorney/Minden  
Douglas County Clerk