IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACOB ANGELO MASSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89075-COA

ORDER OF AFFIRMANCE

Jacob Angelo Massey appeals from a judgment of conviction, entered pursuant to a jury verdict, of felony failure to appear. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

First, Massey argues the State failed to present sufficient evidence to convict him of failure to appear. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Here, Massey was charged pursuant to NRS 199.335 with felony failure to appear. Thus, the State was required to prove: Massey was admitted to bail or released without bail in a felony case, was not recommitted to custody, and failed to appear at the time and place required

by the order admitting him to bail or releasing him without bail, or any modification thereof. *See* NRS 199.335(1), 2(a). The parties stipulated that the underlying case involved a felony. And the State presented evidence that Massey was released from custody on his own recognizance in that felony case, he was not recommitted to custody, and he failed to appear at a hearing that was specified to him when he was released and that was contained in the documents releasing him. We conclude the State presented sufficient evidence for a rational juror to find beyond a reasonable doubt that Massey committed felony failure to appear.

Massey's argument at trial and on appeal is that he was confused about what attorney was representing him after he failed to appear and that no one informed him of the curing provision in NRS 199.335(1) (providing that a person who "surrenders himself or herself not later than 30 days after the date on which the person was required to appear" will not be guilty of failing to appear). However, Massey was told during the relevant 30 days that he failed to appear and that a warrant was issued for his arrest. Therefore, he knew he failed to appear, had a warrant for his arrest, and did not try to resolve it. Further, everyone is presumed to know the law. *Kabew v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 20, 545 P.3d 1137, 1141 n.1 (2024) (citing *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915)). Therefore, we conclude the State presented sufficient evidence that Massey committed felony failure to appear and Massey failed to demonstrate he is entitled to relief on this claim.

Second, Massey argues the district court erred by denying his motion to dismiss the charge based on vindictive prosecution. Massey failed to include a copy of the transcript of the hearing on the motion or the district court's order, oral or written, in the record on appeal. The burden to make

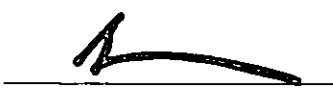
a proper appellate record rests on appellant. *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); *see also* NRAP 30(b)(3). We presume the missing portions of the record support the decision of the district court to deny the motion to dismiss. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Accordingly, we conclude that Massey fails to demonstrate he is entitled to relief on this claim.

Third, Massey argues the district court abused its discretion at sentencing by imposing a term of imprisonment rather than placing him on probation. The granting of probation in this case was discretionary. *See* NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . ."). 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).

Massey's sentence of 12 to 30 months in prison is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d); NRS 199.335(2)(a), and Massey does not allege that the district court relied on impalpable or highly suspect evidence. The district court found that Massey's past failures on probation and his inability to follow orders of the court warranted a prison term. We conclude the district court did not abuse its discretion by declining to suspend the sentence and place Massey on probation. Thus, Massey is not entitled to relief on this claim.

Finally, Massey argues the district court erred by not awarding him 105 days of presentence credits. Massey fails to demonstrate he was entitled to any additional credit. Massey was awarded the credits he seeks on another sentence and the instant sentence was ordered to run consecutively to that other sentence. Because all the presentence credits were awarded to his other sentence, there were no credits left to apply to the instant sentence.[1] *See Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (holding that an offender is entitled to have all of his presentence time served credited toward his ultimate sentence); *Mays v. Eighth Jud. Dist. Ct.*, 111 Nev. 1172, 1176, 901 P.2d 639, 642 (1995) (providing that presentence credit may be split between two or more consecutive sentences). Therefore, we conclude that Massey is not entitled to relief on this claim.

Having concluded that Massey was not entitled to relief, we ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[1]To the extent that Massey argues the district court erred by ordering the instant sentence to run consecutively to his other sentence, Massey fails to demonstrate the district court abused its discretion. *See* NRS 176.035(1); *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015).

cc: Hon. Nathan Tod Young, District Judge
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