IN THE SUPREME COURT OF THE STATE OF NEVADA

LOGAN WILLIAM KEYES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90282

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of six counts of preparing, advertising, or distributing child pornography. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Appellant Logan Keyes was subject to an ongoing investigation in which Reno Police Department's Human Exploitation and Trafficking unit investigated individuals looking to sexually abuse children. Keyes was detained and charged with one count of possession of visual presentation depicting sexual conduct of a person under 16 years of age, and eighteen counts of promotion of sexual performance of a minor under age 14. He subsequently entered plea negotiations and agreed to plead guilty to six counts of preparing, advertising, or distributing material depicting pornography involving a minor, in violation of NRS 200.725. Keyes was then sentenced to 72 to 180 months per count, each to run consecutively for an aggregate total of 36 to 90 years. On appeal, Keyes argues his six counts must be treated as one count based on the proper unit of prosecution under NRS 200.725. He also argues the district court abused its discretion when it failed to consider his mitigation arguments at sentencing. We disagree with Keyes' contentions and affirm the judgment of conviction.

Keyes waived his unit of prosecution challenge

Keyes was originally charged with 18 different counts that each carried a potential life sentence but ultimately agreed to plead guilty to six counts of a different crime for which the sentencing range was substantially lower—one to fifteen years. Having secured a lesser criminal punishment, Keyes now seeks to challenge the six counts to which he pleaded guilty, arguing that the proper unit of prosecution under NRS 200.725 does not allow his sentence for each separate count to stand. Consistent with the State's argument, Keyes waived the instant challenge when he entered his plea agreement.

"In evaluating appeal waiver claims, courts consider 'whether: (1) the appeal falls within the scope of the waiver; (2) both the waiver and plea agreement were entered into knowingly and voluntarily; and (3) enforcing the waiver would . . . result in a miscarriage of justice.'" *Aldape v. State*, 139 Nev. 388, 389, 535 P.3d 1184, 1188 (2023) (quoting *United States v. Adams*, 12 F.4th 883, 888 (8th Cir. 2021)). "[T]he State 'bears the burden of proving that the plea agreement clearly and unambiguously waives a defendant's right to appeal.'" *Id.* at 390, 535 P.3d at 1188 (quoting *Adams*, 12 F.4th at 888).

Although plea agreements are specific to criminal jurisprudence, guilty plea agreements are contracts and thus contractual principles apply. *State v. Crockett*, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994). Therefore, our analysis begins with the plain language of an agreement and we will construe it as written. *Burns v. State*, 137 Nev. 494, 497, 495 P.3d 1091, 1097 (2021).

The plea agreement contains the following provision:

> I understand that I have the right to appeal from adverse rulings on pretrial motions only if the State

> and the Court consent to my right to appeal in a separate written agreement. I understand that any substantive or procedural pretrial issue(s) which could have been raised at trial are waived by my plea.

Keyes characterizes his unit of prosecution challenge as a sentencing challenge, arguing that he did not waive his right to appeal his sentence. He also argues that he did not waive his right to challenge Fifth, Sixth, and Fourteenth Amendment violations based on sentencing abuses by the district court. For the following reasons, we disagree with Keyes and conclude the instant challenge was waived.

First, the instant unit of prosecution challenge falls within the scope of the waiver provision in the plea agreement. We have clarified that a unit of prosecution challenge, "[w]hile often discussed along with double jeopardy" actually "presents an issue of statutory interpretation and substantive law." *Castaneda v. State*, 132 Nev. 434, 437, 373 P.3d 108, 110 (2016) (citation modified). Although unit of prosecution challenges are typically considered after a judgment of conviction, as was done in the instant case, that does not mean a unit of prosecution challenge could not be made sooner during the prosecution. Consistent with the State's argument, Keyes could have withdrawn from plea negotiations or filed a pre-plea motion to dismiss or consolidate charges before pleading guilty. Instead, he chose to secure less exposure to criminal punishment and now challenges his conviction and sentence after already obtaining the benefit of receiving a reduced risk of a much longer sentence following trial. Because Keyes' unit of prosecution challenge "could have been raised at trial," it unambiguously falls within the scope of the waiver agreement.

Second, Keyes knowingly and voluntarily entered into his plea agreement and thereafter knowingly and voluntarily waived the instant

challenge. "This court presumes guilty pleas to be valid." *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008). A guilty plea is knowingly and voluntarily entered when the defendant understands the nature of the charges and consequences that arise from pleading guilty. *Id.* This court looks to the plea canvass in the record and considers the totality of circumstances before determining the validity of the guilty plea. *State v. Freese*, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000).

In the instant case, Keyes was properly canvassed by the district court at the change of plea hearing. Keyes' attorney acknowledged each of the six counts as being "the same offense just with a different time frame for [each] offense[ ]." Keyes was then sworn in and read each count before acknowledging that he was pleading guilty to each charge. The district court ensured that Keyes was entering the plea agreement voluntarily, before reading each count again, attaching date ranges of when each crime occurred for each count and ensuring Keyes understood he was admitting guilt to each count. Keyes affirmatively agreed that he understood the crimes to which he was pleading guilty and the consequences that stemmed from each confession of guilt. In *Sena v. State*, we determined a defendant waived his unit of prosecution challenge when he admitted guilt during the closing arguments of his jury trial. 138 Nev. 310, 325, 510 P.3d 731, 747 (2022). Similarly, here we conclude that Keyes knowingly and voluntarily waived his unit of prosecution challenge when he admitted guilt to each count charged.

Finally, enforcing waiver would not result in a miscarriage of justice. In fact, failing to enforce waiver here would actually prejudice the State since it had substantial evidence of Keyes engaging in child pornography distribution, yet chose to enter a plea agreement to expedite

the prosecution process. Moreover, Keyes' guilty plea caused the State to cease any further investigation, thereby precluding the State from developing a more concrete factual record that could have aided it in responding to a unit of prosecution challenge. On a final note, not enforcing waiver could encourage defendants in the future to enter fictitious plea agreements where they secure lesser criminal exposure before challenging the underlying counts to which they pleaded guilty. Keyes does not provide any argument suggesting any miscarriages of justice would occur, thus, this factor too weighs in favor of waiver.

Keyes waived his unit of prosecution challenge when he entered into his plea agreement. According to the presentence investigation report (PSI), law enforcement conducted a thorough investigation against Keyes and had sufficient evidence against him to prosecute him. The State set forth that evidence in the original information. The State then entered negotiations with Keyes and chose to amend its information, dropping charges that each carried a life sentence, in exchange for Keyes entering a guilty plea to charges with far less severe sentences. Keyes knowingly and voluntarily accepted the State's plea agreement, setting forth such charges, and clearly agreed to them at his change of plea hearing on the record. Keyes did not object to his plea agreement, the record does not suggest that he challenged the charges set forth in the amended information, and the sentencing hearing does not show any attempt to withdraw his plea agreement. Therefore, Keyes did not seriously try to preserve his unit of prosecution challenge in this case. Moreover, all considerations under the instant legal framework suggest that waiver is appropriate here. Accordingly, we conclude that Keyes waived his unit of prosecution challenge.

The district court did not abuse its discretion at sentencing

Keyes was sentenced 36 to 90 years in the aggregate. He argues that the district court failed to consider his arguments during the mitigation portion of sentencing.

District courts have wide discretion in rendering sentencing decisions; thus, this court reviews such determinations for an abuse of discretion. *Chavez v. State,* 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). The district court is allowed to consider "any reliable and relevant evidence" that would not otherwise be admissible at trial since rules of evidence do not apply to sentencing decisions. NRS 176.015(6); NRS 47.020(3)(c). Because few limitations are placed on a judge when sentencing an individual, "courts are generally free to consider information extraneous to the presentencing report." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). As long as evidence considered is not "impalpable or highly suspect," the district court will not have abused its discretion at sentencing. *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Absent a showing of an abuse of discretion, "this court has repeatedly declined to interfere with sentencing when the sentence is legal and within the statutory limits." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Keyes first argues the district court arbitrarily rejected expert opinions regarding Keyes' likelihood of reoffending. Keyes contends that one expert was rejected for having a purported bias while the other was rejected because "psychiatrists cannot accurately determine the precise probability of recidivism," which directly contradicts NRS 176A.110.

In reviewing the record, it is not clear that the district court rejected such opinions. All three experts opined to the effect that Keyes was not at high risk for reoffending. During the sentencing hearing, the district court agreed and made a factual finding that "Mr. Keyes is not a high risk

to reoffend, and so under the statutory scheme, probation is an available disposition in his case." This fact does not demonstrate that the district court rejected such opinions, rather, it supports the notion that the district court agreed, to a certain extent, with the experts. Where the problem seems to lie, is that the district court showed skepticism towards the reports, stating that "to say [Keyes] [is] not a high risk to reoffend is not to say he is no risk to reoffend." Thereafter, the district court rejected Keyes' request for probation despite his technical eligibility under NRS 176A.110 and sentenced him to the maximum sentence allowed under the law. Keyes' argument insinuates that he is entitled to probation under NRS 176A.110, since a qualified expert opined that he is not at high risk of reoffending, however, the statute provides that a person is only *eligible* for probation when such opinion is made. Therefore, the district court did not abuse its discretion when it denied Keyes' probation request.

The district court discounted one expert's report based on inconsistency in the expert's prior opinion, which was its prerogative to do. At sentencing, district courts are given wide discretion and are not required to make findings or grant probation based on an expert's testimony. Likewise, district courts are not required to accept an expert's testimony without being skeptical of such opinions. A defendant's safety net for such discretion is that the sentencing decision is not based on evidence that is impalpable or highly suspect. In this instance, the district court's reasoned skepticism toward the expert reports does not suggest that the sentence, which was within legal limits, was improper or amounted to an abuse of discretion.

Keyes next argues that the district court relied on highly suspect evidence, that Keyes was "sex trafficking in [the] community"

despite not being charged for such crime. Keyes also argues he was not in the best position to decide whether to waive his constitutional rights when entering the plea agreement since he was unaware the district court judge would be biased in this case. On a final note, Keyes points to the fact that a prosecutor argued facts without any support evidence at sentencing, and although those facts were not relied upon, the fact that the district court imposed the State's suggested sentence demonstrates the district court was influenced by these unsupported facts.

The district court is allowed to consider facts from the PSI. *See Denson*, 112 Nev. at 492, 915 P.2d at 286. In this case, the PSI provided that Keyes took affirmative steps to meet with a "father" to sexually abuse his three-year-old son and required clarification on the father's rule against "rough play," while seeking "[p]enetration, sucking, kissing, [and] touching." Keyes only stopped from attending this meet-up when undercover operations became public knowledge through the media. The district court is allowed to "consider prior uncharged crimes during sentencing, [however,] the district court must refrain from punishing a defendant for prior uncharged crimes." *Denson*, 112 Nev. at 494, 915 P.2d at 287. The consideration of prior crimes "is solely for the purpose of gaining a fuller assessment of the defendant's 'life, health, habits, conduct, and mental and moral propensities.'" *Id.* (quoting *Williams v. New York*, 337 U.S. 241, 245 (1949)). In this case, it cannot be said that the district court punished Keyes for sex trafficking in the community when Keyes' sentence fell within the legislatively established statutory limits. NRS 200.725(2)(a). At worst, the consideration of the facts set out in the PSI was factored into Keyes' overall mental propensities and his likelihood of reoffending, which the district court determined was *not* a high risk. But the district court also

grappled with the idea that Keyes still presented *some* risk of reoffending. While Keyes takes issue with the statements made by the district court, the record reflects that the district court balanced Keyes' mitigating arguments against the underlying facts which were not in dispute.

The district court is not required to grant probation based on expert testimony. While the district court showed skepticism toward Keyes' mitigation argument, it still concluded that Keyes was not at high risk of reoffending, a conclusion consistent with the expert opinions. The district court then acknowledged the troubling facts set out in the PSI and then issued a sentence within statutory limits. Ultimately, Keyes negotiated and agreed to the charges he was sentenced under. While he challenges the unit of prosecution in this case, he does not challenge the sentences running consecutively. The sentence is legal, within statutory limits, and no suspect or impalpable evidence was used to support the sentence in this case. Therefore, the district court did not abuse its discretion at sentencing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Bell, J.
Bell

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