

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERRY JAY DUNCAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39519

FILED

JUN 04 2003

ORDER OF AFFIRMANCE

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction. Appellant Perry Duncan pleaded guilty to two counts of lewdness with a child under the age of fourteen in violation of NRS 201.230. The district court sentenced appellant to serve two terms of life in the Nevada State Prison with the possibility of parole after ten years. The district court ordered the terms to be served consecutively. Appellant contends on appeal that the district court relied upon impalpable and highly suspect evidence when it sentenced him to serve consecutive sentences. We conclude that appellant's contention is without merit.

District courts are afforded wide discretion in sentencing.¹ 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 or accusations founded on facts supported only by impalpable or highly suspect evidence."²

Here, appellant alleges that the deputy district attorney erroneously informed the district court at sentencing that appellant could

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

be eligible for parole prior to serving the minimum sentence set forth in NRS 201.230; therefore, she argued, appellant's sentence for each count should run consecutively, rather than concurrently.

NRS 213.120(2) provides that minimum sentences may not be reduced by credits earned for persons convicted after July 1, 1995.³ Appellant is required to serve the entire minimum sentence set forth in NRS 201.230, which is ten years for each count. Therefore, we agree with appellant that the deputy district attorney misstated the law in her argument.

Our review of the record, however, reveals no indication that the district court actually relied upon those misrepresentations as the basis for its decision. In fact, the district court questioned the validity of the State's representation. The record reveals that the district court specifically intended that appellant serve a minimum of twenty years in prison before becoming eligible for parole,⁴ which meant the imposition of two consecutive life terms with the possibility of parole after ten years. We also note that appellant's sentence was in accordance with the recommendation in his pre-sentence investigation report and that the victims' families requested at the sentencing hearing that appellant receive the maximum sentence possible.

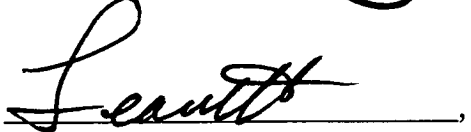
³See also Hunt v. Warden, 111 Nev. 1284, 903 P.2d 826 (1995) (good time credits do not apply to sentences for life terms).

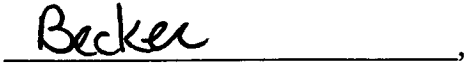
⁴We note that the district court specifically questioned appellant's counsel's argument that it would hurt society to give appellant consecutive sentences, and responded, "That's 20 years of safety to other little girls."

We conclude that the district court did not rely on any impalpable or suspect evidence and that appellant suffered no prejudice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Michael R. Griffin, District Judge
State Public Defender/Carson City
Attorney General Brian Sandoval/Carson City
Storey County District Attorney
Storey County Clerk