

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO LEYNES-RODELAS, A/K/A  
FERNANDO LEVNESRODELAS, A/K/A  
FERNANDO L. RODELAS, A/K/A  
FERNANDO LEYNES RODELAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40724

FILED

AUG 29 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve a prison term of 24 to 60 months and imposed a special sentence of lifetime supervision.

Appellant contends that the district court violated his right to due process by basing its sentencing decision, at least in part, on appellant's illegal immigrant status. Specifically, appellant contends that the district court denied appellant's request for probation, in part, because he was an alien residing illegally in the United States. We conclude that appellant's contention lacks merit.

Appellant failed to preserve this issue for appeal. Specifically, he failed to object at sentencing on the ground that consideration of his alleged status as an illegal immigrant would violate his constitutional rights. Failure to raise an objection with the district court generally

precludes appellate consideration of an issue.<sup>1</sup> This court may nevertheless address an assigned error if it was plain and affected the appellant's substantial rights.<sup>2</sup> We conclude that no plain error occurred in this case.

This court has consistently afforded the district court wide discretion in its sentencing decisions.<sup>3</sup> We 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.”<sup>4</sup> Appellant correctly notes that a district court violates a defendant’s right to due process when it determines a sentence based on a defendant’s ethnicity or nationality.<sup>5</sup> However, a mere passing reference to a defendant’s status as an immigrant does not provide sufficient grounds to disturb a district court’s sentencing determination.<sup>6</sup>

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<sup>1</sup>See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

<sup>2</sup>See NRS 178.602 (“Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”).

<sup>3</sup>See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1378 (1987).

<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>5</sup>See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

<sup>6</sup>See id. at 738, 961 P.2d at 145-46; see also United States v. Leung, 40 F.3d 577, 587 (2d Cir. 1994) (citing United States v. Jacobson, 15 F.3d

*continued on next page . . .*

In the instant case, appellant has not shown that the district court relied on impalpable or highly suspect evidence at sentencing. Our review of the record reveals no indication that the district court was biased against illegal immigrants or believed that an offense was more serious if committed by an illegal immigrant. Moreover, we disagree with appellant that the district court's sentencing decision was based, in part, on appellant's ethnicity, nationality or immigrant status. Rather, the record indicates that the district court concluded that appellant was not amenable to probation after properly considering the circumstances presented, including the nature of the charged offense, arguments from counsel, appellant's statement of allocution, the presentence investigation report, and appellant's psychological evaluations.<sup>7</sup> The district court's passing reference to the fact that appellant would likely be deported does not provide sufficient grounds to disturb the district court's sentencing determination.<sup>8</sup> Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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*... continued*


19, 23 (2d Cir. 1994); United States v. Tarricone, 996 F.2d 1414, 1424-25 (2d Cir. 1993)).

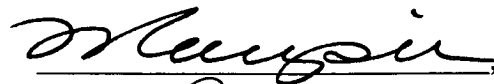
<sup>7</sup>See NRS 176A.100(1)(C)-(5) (providing that the granting of probation is discretionary).


<sup>8</sup>See id. at 738, 961 P.2d at 145; see also Leung, 40 F.3d at 587 (citing Jacobson, 15 F.3d at 23; Tarricone, 996 F.2d at 1424-25).

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

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

cc: Hon. Kathy A. Hardcastle, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk