

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS AMADOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40959

FILED

JUN 12 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, pursuant to a guilty plea, of larceny from the person not amounting to robbery, a felony. The district court sentenced appellant to imprisonment for a maximum term of 36 months and a minimum term of 12 months. The court further ordered appellant to pay certain fees for an administrative assessment, legal representation and DNA testing.

Appellant asserts that the district court violated his constitutional rights at sentencing by considering, in determining whether to grant probation, whether he was illegally residing in or had illegally immigrated to the United States and by relying on a recommendation from the State of Nevada Division of Parole and Probation that was based on a policy of refusing to recommend probation for immigrants with illegal status.

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

generally precludes appellate consideration of an issue.¹ This court may nevertheless address an assigned error if it was plain and affected the appellant's substantial rights.² We conclude that no plain error occurred here.

This court affords the district court wide discretion in its sentencing decision.³ Accordingly, we will not interfere 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."⁴ This court has stated that in imposing a sentence a district court may consider a nearly unlimited variety of information, but basing a sentencing decision on the defendant's nationality or ethnicity violates due process.⁵

Appellant objects to the district court's consideration of the Division's recommendation against probation based on his immigration status, but he does not demonstrate that the district court considered that fact: the court made no reference to his nationality, ethnicity, or alien status in pronouncing the sentence.⁶ The record does not reveal that the

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

²See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

³See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

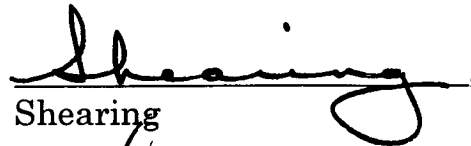
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁵Martinez v. State, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998).


⁶We note that other courts have determined that, in determining sentence, a court may consider a defendant's illegal immigration activities,
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district court was biased against foreigners or immigrants, believed that an offense is more serious if committed by a foreigner, or was sentencing appellant more harshly because of his immigrant status. Moreover, appellant has not shown that the district court relied on impalpable or highly suspect evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

... continued

among other relevant factors. See, e.g., United States v. Gomez, 797 F.2d 417, 420 (7th Cir. 1986) (recognizing that the defendant's act of illegal entry into the United States "is no different than any other recent prior illegal act of any defendant being sentenced for any offense"); People v. Cisneros, 100 Cal. Rptr. 2d 784, 788 (Ct. App. 2000) ("Illegal alien status is a legitimate factor for consideration but does not categorically preclude a grant of probation."); Yemson v. United States, 764 A.2d 816, 819 (D.C. 2001) (recognizing that a sentencing court need not "close its eyes to the defendant's status as an illegal alien and his history of violating the law, including any law related to immigration"); Infante v. State, 25 S.W.3d 725, 727 (Tex. Ct. App. 2000) (similar). Because it is not plain that the district court considered this factor here, we need not reach this issue.

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk