

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROLANDO ARGUELLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41025

FILED

JUN 12 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to an Alford¹ guilty plea, of conspiracy to manufacture or compounding of a controlled substance. The district court sentenced appellant to imprisonment for a maximum term of 32 months and a minimum term of 12 months. The court further ordered appellant to pay administrative assessment and drug analysis fees.

Appellant contends that the district court violated his rights to due process by basing its sentencing decision on appellant's status as an immigrant illegally residing in the United States. We conclude that appellant's contention lacks merit.

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

This court has consistently afforded the district court wide discretion in its sentencing decisions.² 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.”³ Appellant correctly argues that a district court violates a defendant’s rights to due process when it determines a sentence based on a defendant’s ethnicity or nationality.⁴ 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.⁵

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence. Moreover, our review of the record reveals no indication that the district court’s sentencing decision was based on appellant’s ethnicity, nationality or immigrant status. Instead, it appears obvious that the district court’s

²See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1378 (1987).

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

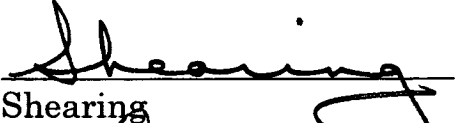
⁴See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

⁵See id. at 738, 961 P.2d at 145; see also United States v. Leung, 40 F.3d 577, 587 (2d Cir. 1994) (citing United States v. Jacobson, 15 F.3d 19, 23 (2d Cir. 1994); United States v. Tarricone, 996 F.2d 1414, 1424-25 (2d Cir. 1993)).

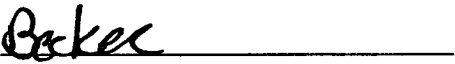
singular concern at sentencing was with the serious nature of appellant's drug-related crime. The district court's passing reference to appellant's status as an immigrant provides no basis to disturb the court's sentencing determination.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

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