

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICASIO GABO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41689

**FILED**

JAN 21 2004

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 a guilty plea, of statutory sexual seduction (count I), coercion (count II), and conspiracy to commit sexual assault on a child (count III). The district court sentenced appellant Nicasio Gabo to serve a prison term of 13 to 60 months for count I, a consecutive prison term of 12 to 60 months for count II, and a consecutive prison term of 12 to 60 months for count III.

Gabo contends that the district court abused its discretion in sentencing by basing its sentencing decision on its "disdain for Gabo's sexual orientation." Specifically, Gabo contends that, in light of the district court's commentary about Gabo's "lifestyle," the district court's decision to impose consecutive sentences "was clearly a subjectively emotion reaction to the homosexual behavior in this case." We conclude that Gabo's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decisions.<sup>1</sup> "[T]his court will reverse a sentence if it is supported solely by impalpable and highly suspect

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<sup>1</sup>See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1378 (1987).

evidence."<sup>2</sup> A mere passing reference to a defendant's status, however, does not provide sufficient grounds to disturb a district court's sentencing determination.<sup>3</sup>

In the instant case, Gabo 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 homosexuals or believed that an offense was more serious if committed by a homosexual. Moreover, we disagree with Gabo that the district court's sentencing decision was based on Gabo's sexual orientation. Rather, the record of the sentencing hearing indicates that the district court decided to impose consecutive sentences after properly considering the circumstances presented, including the nature of the charged offense, arguments from counsel, Gabo's statement of allocution, the presentence investigation report, and the victim impact testimony.<sup>4</sup> The district court's passing references to Gabo's "lifestyle" does not provide sufficient grounds to disturb the district court's sentencing determination. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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<sup>2</sup>Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).

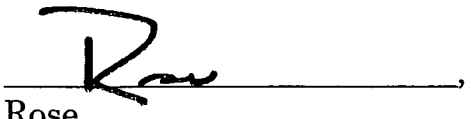
<sup>3</sup>See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145-46 (1998) (remanding for a new sentencing hearing because sentencing court's comments about defendant's nationality went beyond a passing reference).

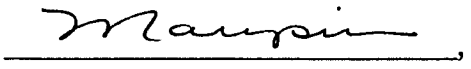
<sup>4</sup>See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967) (providing that the district court has discretion to impose sentences consecutively or concurrently).

Having considered Gabo's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

  
Shearing C.J.

  
Rose J.

  
Maupin J.

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