

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41910

FILED

MAR 05 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 one count of conspiracy to sell a controlled substance. The district court sentenced appellant Pedro Gonzalez to serve a prison term of 14 to 48 months.

Gonzalez first contends that his right to due process was violated at the sentencing proceeding because the district court relied on a presentence investigation report (PSI) containing material misrepresentations about his criminal history. Specifically, Gonzalez argues that the PSI contained comments that would lead the sentencing judge to conclude that Gonzalez "was on parole at the time of the offense, that at the time of sentencing he was still on parole for the same case, that he had two felony convictions at the time of this offense and that he should be sent to prison because he is an illegal immigrant."

Preliminarily, we note that Gonzalez failed to preserve this issue for appeal. Specifically, Gonzalez failed to object at sentencing to the contents of the PSI. Failure to raise an objection in 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 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 In this case, Gonzalez has failed to show that the sentencing court relied on the information alleged to be inaccurate in the PSI. Accordingly, Gonzalez's right to due process was not violated.

Additionally, for the first time on direct appeal, Gonzalez alleges that he is entitled to credit for time spent in presentence confinement. We decline to consider Gonzalez's contention because he failed to raise this issue in the district court. We note, however, that Gonzalez may seek credit for time spent in custody prior to sentencing by filing a post-conviction petition for a writ of habeas corpus in the district court.⁴


¹See Emmons v. State, 107 Nev. 53, 61, 807 P.2d 718, 723 (1991), modification on other grounds recognized by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).


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.").

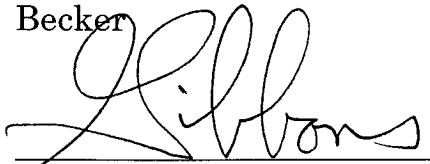
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁴See NRS 34.724(2)(c); Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), clarified on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

Having considered Gonzalez's contentions and concluded that they are either inappropriate for review on direct appeal or lack merit, we ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Shearing


_____, J.
Becker


_____, J.
Gibbons

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