

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN HAZELHURST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42217

FILED

APR 08 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOW
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 voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to a prison term of 24 to 60 months, with an equal and consecutive term for the use of a deadly weapon.

Appellant first takes issue with the presentence investigation report (PSI) that was prepared by the Division of Parole and Probation. Specifically, appellant argues that the PSI contained factual errors and that appellant was not allowed sufficient time to review the PSI.

The record reveals that appellant received the PSI on the afternoon before sentencing. When court convened on the morning of sentencing, defense counsel informed the court that he needed more time to review the PSI. The district court continued sentencing until 1:30 p.m. When the sentencing hearing resumed, defense counsel spoke at length regarding the PSI and the perceived mistakes. The State did not dispute the mistakes. We conclude that appellant was given sufficient time to

review the PSI and also given the opportunity to comment on the PSI and make corrections.¹ Appellant's argument is therefore without merit.

To the extent that appellant argues that the sentencing recommendation contained in the PSI was based on a mistake of fact, appellant cannot demonstrate prejudice, as the district court did not follow the recommendation contained in the PSI.

Appellant also argues that the errors in the PSI have not been corrected and the PSI "is now following [him] through the criminal detention system." Appellant fails to allege any adverse effect he has suffered as a result of any error contained in the PSI, and we therefore conclude that this claim is purely speculative.

Appellant next contends that the State impermissibly changed its theory between appellant's sentencing hearing and the sentencing hearing of his co-defendant. At appellant's sentencing, the State argued that he and his co-defendant were equally culpable. At the co-defendant's sentencing, the State pointed out that the co-defendant was the instigator, and that the co-defendant had previously threatened the victim. We conclude that the State did not use "fundamentally inconsistent theories in order to convict [appellant and his co-defendant]."² This contention is therefore without merit.

Appellant next contends that the district court erred by not allowing defense counsel to address the court after the victim's parents

¹See Shields v. State, 97 Nev. 472, 634 P.2d 468 (1981) (holding that defendants should be afforded the opportunity to examine all factual assertions contained in a PSI and have an opportunity to comment and respond).

²Johnson v. State, 118 Nev. 787, 798, 59 P.2d 450, 457 (2002).

gave a statement, and by refusing to allow defense counsel the opportunity to cross-examine the parents.

NRS 176.015(3) specifically provides that victim impact statements are to be presented after the defendant has an opportunity to address the court. The district court followed this procedure in the instant case. Appellant argues that the statute denies a defendant the right to due process because a defendant is prevented from correcting any misinformation that might be included in the victim impact statement. Appellant has failed to allege any misinformation that was included in the parents' statement in this case, and defense counsel did not object to any part of the victim impact statement. We therefore conclude that appellant's right to due process was not violated.

Moreover, this court has held that where a victim impact statement refers only to "the facts of the crime, the impact on the victim, and the need for restitution . . . cross-examination . . . normally [is] not required."³ We conclude that cross-examination was not required in this case.

Finally, appellant argues that the district court erred by denying his pre-trial petition for a writ of habeas corpus. However, by pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea.⁴

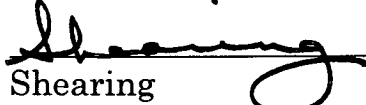
³Buschauer v. State, 106 Nev. 890, 893-94, 804 P.2d 1046, 1048 (1990).

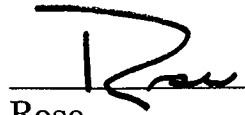
⁴See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

Moreover, appellant entered his guilty plea without preserving his right pursuant to NRS 174.035(3) to challenge the district court's ruling.⁵

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

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵NRS 174.035(3) provides that a defendant may enter a conditional guilty plea, "reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion."