

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ALLEN WALKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42402

**FILED**

JUN 25 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Ronald Allen Walker to serve a prison term of 16 to 72 months and then suspended execution of the sentence, placing Walker on probation for a time period not to exceed 5 years. The district court also ordered Walker to pay \$226,000.00 in restitution.

Walker first contends that the State breached the plea agreement at the sentencing hearing by arguing that Walker was involved in the shooting of bar employee Timothy Canfield. Specifically, Walker contends that the prosecutor's argument violated a factual stipulation, which he alleges provided that Walker had no involvement with the Canfield shooting. We conclude that Walker's contention lacks merit.

When the State enters a plea agreement, it is held to "the most meticulous standards of both promise and performance" in

fulfillment of both the terms and the spirit of the plea bargain.<sup>1</sup> Due process requires that the bargain be kept when the guilty plea is entered.<sup>2</sup>

Pursuant to an amendment to the plea agreement made at the oral canvass, the prosecutor agreed to "state at sentencing that there is no evidence to connect Mr. Walker with any knowledge or intent that his codefendant Willis had a gun or would use it in connection with these events." We conclude that the prosecutor satisfied that obligation at sentencing by expressly informing the district court about the precise terms of the factual stipulation. We further conclude that the prosecutor's argument about the circumstances of the burglary, namely, that the charged crime was committed against a person and resulted in the Canfield shooting, did not violate the factual stipulation of the parties. Accordingly, the State did not breach the plea agreement.

Walker next contends that the district court abused its discretion at sentencing by refusing to grant his request for a diversion program pursuant to NRS 458.310.<sup>3</sup> We conclude that Walker's contention lacks merit.

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<sup>1</sup>Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

<sup>2</sup>Id.

<sup>3</sup>In a related argument, Walker contends that the district court abused its discretion by denying his oral motion for a continuance made during the sentencing proceeding. Walker has failed to show that the district court acted arbitrarily, or that he was prejudiced by the denial of that motion. Cf. Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978).

This court has consistently afforded the district court wide discretion with regard to sentencing, including whether to grant a request for a diversion program under NRS 458.310.<sup>4</sup> Generally, 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."<sup>5</sup>

In this case, Walker has failed to show that the district court relied on impalpable or highly suspect evidence at sentencing. Our review of the transcript of the sentencing hearing indicates that the district court properly exercised its discretion with regard to Walker's request for a diversion program, denying it after considering the statutory factors set forth in NRS 458.320(2) and finding that he was not a good candidate for alcohol treatment.

Walker next contends that the district court erred in allowing Canfield's victim impact statement because he was not the victim of Walker's offense as defined in NRS 176.015(5)(b). We disagree. Preliminarily, we note that the district court allowed Canfield to testify as a general witness, rather than give a victim impact statement, ruling that he was "not the direct victim to [the] action." To the extent that Walker contends that the district court abused its discretion in admitting Canfield's testimony because it was irrelevant, overly prejudicial or impalpable, we disagree. As we have previously stated, the sentencing

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<sup>4</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987); NRS 458.320(1) – (3).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

court retains the discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant."<sup>6</sup> Canfield's testimony detailing the shooting at the bar was sufficiently related to the burglary offense committed by Walker to be considered at the sentencing hearing. Accordingly, the district court did not abuse its discretion in considering it.

Finally, Walker contends that the district court erred in imposing restitution for Canfield's injuries because he was never charged with a crime involving Canfield. Although Walker concedes that he agreed to the restitution amount, Walker contends that his consent was involuntary because it was compelled "by the implicit threat that Mr. Walker would not get probation if he persisted in asserting that he could not be ordered to pay restitution; and by the judge's refusal to sentence Mr. Walker and consider the restitution issue later." We conclude that Walker's contention lacks merit.

[A] defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution."<sup>7</sup> In this case, Walker has failed to show that the agreement was coerced by the district court. The sentencing court did not participate in the negotiations concerning restitution and, in fact, allowed a brief recess in the sentencing proceeding so that the parties could come to an agreement on the issue. Accordingly,

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<sup>6</sup>Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

<sup>7</sup>Erickson v. State, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991).

we conclude that the restitution that the district court imposed as a condition of probation was proper.<sup>8</sup>

Having considered Walker's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge  
Martin H. Wiener  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>8</sup>See Igbinovia v. State, 111 Nev. 699, 895 P.2d 1304 (1995).