

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID SAMUEL SAUNDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57832

FILED

JUL 14 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of domestic battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

A jury convicted appellant David Saunders of domestic battery causing substantial bodily harm, and the district court imposed a prison sentence of 24 to 60 months. Saunders appeals his conviction on the following grounds: (1) there was insufficient evidence to support his conviction, (2) the district court relied on impalpable evidence in determining his sentence, and (3) the district court abused its discretion by giving him the maximum sentence. Because we find no error occurred in this case, we affirm the judgment of conviction.

Sufficiency of the evidence

“When determining whether a jury verdict was based on sufficient evidence . . . we will inquire whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Vega v. State, 126 Nev. ___, ___, 236 P.3d 632, 639 (2010) (quoting Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007)) (internal quotations omitted). The testimony of the victim alone is sufficient to support a conviction, and “[t]he jury is at liberty to reject the

defendant's version of events." Porter v. State, 94 Nev. 142, 146, 576 P.2d 275, 278 (1978); see also Henderson v. State, 95 Nev. 324, 326, 594 P.2d 712, 713 (1979). When there is conflicting testimony, it is within the province of the jury to weigh the evidence and make credibility determinations. Estes v. State, 122 Nev. 1123, 1144, 146 P.3d 1114, 1128 (2006).

Here, Saunders punched his girlfriend Shawn Burroughs three times in the area of her ribs and spleen causing life-threatening injuries. He claimed at trial that Shawn sustained her injuries when she fell in the bathtub. Shawn testified that she originally lied about how she was injured so as not to worry her family and to protect Saunders. Shawn also conceded that she was an alcoholic. Shawn explained at trial that when she realized how badly she was injured she decided to tell the truth and reveal that Saunders had caused her injuries. Saunders argues on appeal that Shawn's testimony was inconsistent and unreliable because of the various lies she told about how her injuries occurred, and that her admission that she was an alcoholic further diminished the credibility of her testimony.

The State elicited testimony from Shawn's daughter and her mother corroborating Shawn's version of the events. Additionally, the State entered into evidence photographs depicting three distinct bruises over the area where Shawn testified Saunders hit her. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Saunders was guilty on all charges.

The sentence

Saunders next challenges his sentence on four separate grounds: (1) the district court relied on impalpable evidence in determining his sentence, (2) the district court impermissibly exercised no discretion at all by adopting the sentence recommended by the State, (3) the role of the parole board was usurped because he was given the maximum sentence, and (4) his criminal record did not justify the maximum sentence. We conclude that Saunders' contentions are without merit.

A sentencing decision is reviewed for abuse of discretion, and the sentencing judge is allowed much discretion in determining a sentence. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004); Tanksley v. State, 113 Nev. 844, 848, 944 P.2d 240, 242 (1997); Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996). We will not interfere with a sentence unless the district court considered impalpable evidence in a way that prejudiced the defendant. Norwood, 112 Nev. at 440, 915 P.2d at 278-79 (concluding that defendant had a right to a new penalty hearing after determining that "[t]he . . . unsubstantiated assertion [that defendant was a gang leader] appears to have affected the sentence, thus resulting in prejudice to [defendant].").

Saunders was convicted of domestic battery causing substantial bodily harm, which is a class C felony. NRS 200.481(2)(b). A class C felony is punishable by up to five years in prison. NRS 193.130(2)(c). At the sentencing hearing, Saunders requested a sentence of 12 to 48 months. The State recommended 24 to 60 months. In sentencing Saunders, the district court reasoned that the maximum sentence was appropriate in view of Saunders' "prior batteries" and his

failure to comply with parole. Thus, Saunders argues, the district court mistakenly relied on impalpable evidence because he has only one previous conviction for domestic battery. We disagree.

At the sentencing hearing, defense counsel pointed out that Saunders had been convicted of domestic battery once, several years prior. Defense counsel also stated that Saunders' criminal history consisted of a felony DUI causing injury/death, and multiple misdemeanors and parole violations. The State later argued that Saunders had two prior domestic violence charges, asserting that he was violent and had not learned from his past. Saunders was given a chance to address the court, and he explained the details surrounding a single previous domestic battery conviction. Although it does not appear that the district court attempted to reconcile the discrepancy between the one domestic battery conviction put forward by Saunders and the two domestic battery charges alluded to by the State, Saunders fails to demonstrate how this resulted in prejudice to him.

Furthermore, the district court had discretion to sentence Saunders within the statutory guidelines, including the maximum sentence, so long as it adequately considered the facts of the case and the goals of the criminal justice system. See Allred, 120 Nev. at 421, 92 P.3d at 1253-54 (upholding a district court's sentencing decision after determining that "[t]he district court considered the facts of the case, including the criminal justice system's goals of deterrence, rehabilitation, and punishment"). After carefully considering the parties arguments during the sentencing hearing and the facts of the case, the district court explained its reasoning before sentencing Saunders to the statutory maximum of 24 to 60 months.


Although Saunders argues that the district court's imposition of the maximum sentence usurped the role of the parole board,¹ he cites no authority for this proposition and we conclude that this argument is without merit. If we were to recognize such an argument, the statutory sentencing guidelines would be rendered a nullity. Accordingly, for the reasons stated above, we reject Saunders' four challenges to his sentence and conclude that the district court did not abuse its discretion in sentencing Saunders to a statutory maximum of 24 to 60 months.

Having reviewed the record, considered Saunders contentions, and concluded that none of them warrant reversal, we

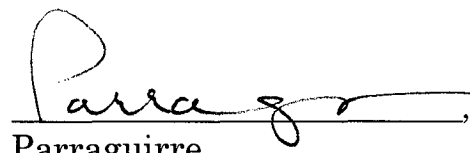
¹Pursuant to statute, the district court determines the defendant's sentence, including the minimum and maximum terms, and the parole board determines each defendant's suitability for release on parole within the limitations of that sentence. See NRS 193.130; NRS 213.1099 ("[T]he Board may release on parole a prisoner who is otherwise eligible for parole."). Further, NRS 213.10705

declares that the release or continuation of a person on parole or probation is an act of grace of the State. No person has a right to parole or probation . . . and it is not intended that the establishment of standards relating thereto create any such right or interest.

ORDER the judgment of the district court AFFIRMED.

_____, J.
Saitta

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Robert H. Perry, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk