IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DALE CARRINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57922

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of third-offense driving under the influence. Third Judicial District Court, Churchill County; Leon Aberasturi, Judge.

First, appellant Robert Dale Carrington contends that the district court abused its discretion at sentencing by denying his application for deferral of judgment and treatment pursuant to former NRS 484.37941 (currently codified as NRS 484C.340). Carrington claims the district court failed to consider the merits of his application and based its decision on impalpable and highly suspect evidence and its belief that the treatment program "lacked funding and manpower." We disagree.

The district court has the discretion to grant or deny an application for diversion filed pursuant to NRS 484C.340. See Aguilar-Raygoza v. State, 127 Nev. ___, ___, 255 P.3d 262, ___ (Adv. Op. No. 27, June 2, 2011); Picetti v. State, 124 Nev. 782, 794, 192 P.3d 704, 712 (2008). Here, the district court found, based on a consideration of his previous history, that Carrington did not have the ability to complete the treatment program and denied his application for diversion. Additionally, Carrington failed to demonstrate that the district court's decision was based solely on impalpable or highly suspect evidence. See Chavez v.

State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). We conclude that the district court did not abuse its discretion. See Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000) (this court will not disturb a district court's sentencing determination absent an abuse of discretion).

Second, Carrington contends that the district court abused its discretion by denying his application for diversion before allowing him to allocute in violation of NRS 176.015(2)(b)(1). Initially, we note that Carrington failed to object to the alleged error below. See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997) (failure to raise an objection with the district court generally precludes appellate consideration of an issue); see also NRS 178.602. Contrary to Carrington's assertion, NRS 176.015(2)(b)(1) does not require allocution prior to the application determination, but rather only requires the opportunity prior to the imposition of sentence. Our review of the record reveals that the district court addressed Carrington and provided him with the opportunity to allocute prior to the imposition of the sentence. Therefore, we conclude that the district court did not commit plain error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.

Hardesty, J.

Parraguirre, J.

cc: Hon. Leon Aberasturi, District Judge
Fahrendorf, Viloria, Oliphant & Oster, LLP
Attorney General/Carson City
Churchill County District Attorney
Court Administrator