

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK D. STEWART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36126

FILED

AUG 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Buschauer*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of failure to provide for the support and maintenance of children. The district court sentenced appellant to serve two consecutive terms of 24 to 60 months in the Nevada State Prison.

Appellant contends that his rights to due process of law and to confront witnesses were violated by the attachment of written victim impact statements to the presentence investigation report. Citing *Buschauer v. State*, 106 Nev. 890, 804 P.2d 1046 (1990), appellant complains that because the impact statements referred to prior bad acts, the victims should have been placed under oath and subjected to cross-examination. We disagree.

In *Buschauer*, we explained that a victim impact statement may be introduced at sentencing in two ways: "First, where a victim cannot or does not wish to appear in court, the statement may be placed in written form in the presentence report pursuant to NRS 176.145. Second, the victim may give an oral statement at the sentencing hearing pursuant to NRS 176.015(3)." 106 Nev. at 893, 804 P.2d at 1048. We further explained that when "the second of the two alternatives is used, we must balance the dictates of due process with the legitimate interests of the victim, as expressed by the legislature." *Id.* Accordingly, we concluded that when the victim gives an oral statement at sentencing and intends to refer to specific prior acts of the defendant, "due process requires that the accuser be under oath, an opportunity for cross-examination and, perhaps

most importantly, reasonable notice of the prior acts which the impact statement will contain." Id. at 894, 804 P.2d at 1048.

Buschauer is not applicable in this case. The impact statements in this case were written and attached to the presentence report. Thus, the heightened due process requirements set forth in Buschauer for the use of oral statements that refer to prior bad acts are not applicable.¹

Having considered appellant's contention and concluded that it is without merit, we

ORDER this appeal dismissed.

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.

cc: Hon. Merlyn H. Hoyt, District Judge
Attorney General
Lincoln County District Attorney
State Public Defender
Lincoln County Clerk

¹We note that appellant did not object to the statements below or attempt to subpoena the victims to testify at the sentencing hearing.