

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLEN CODY FERRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36344

FILED

OCT 31 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction pursuant to a guilty plea of one count of attempted lewdness with a child under the age of fourteen years.

Appellant Glen Ferrell was charged with one count of attempted sexual assault with a minor under sixteen years of age and one count of indecent exposure. Ferrell agreed to plead guilty to one count of attempted lewdness with a child under the age of fourteen years. The district court accepted Ferrell's guilty plea and ordered him to undergo a psychosexual evaluation pursuant to NRS 176.133, NRS 176.135, and NRS 176.139. Thereafter, Ferrell signed an acknowledgment of psychosexual evaluation form. Throughout his psychosexual evaluation, conducted by two psychological professionals, Ferrell maintained his innocence and asserted that he was playing with the eight-year-old girl and never intended to sexually gratify himself. One professional concluded that Ferrell would not be a menace to the health, safety, or morals of others if granted probation. However, the other professional concluded that Ferrell's recidivism potential was in the moderate risk range, that he was a marginal candidate for community supervision, and that he was a poor candidate for sex offense specific treatment due to his denial of any sexual problem. As a result, the Division of Parole and

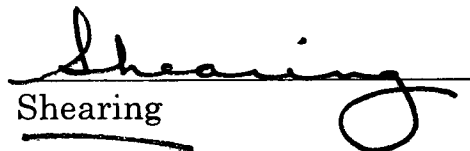
*Order corrected and
re-mailed 10/31/02. JCR*

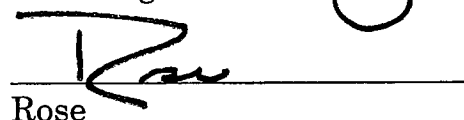
Probation's presentence investigation and report recommended that Ferrell serve a sentence of eight years with parole eligibility after two or three years and stated that he was a marginal candidate for community supervision. The district court sentenced Ferrell to serve eight years with parole eligibility after three years.

Ferrell contends that his Fifth Amendment right against self-incrimination was violated when the district court considered his refusal to admit guilt during the mandatory psychosexual evaluation pursuant to NRS 176.139¹ in determining his sentence.

Pursuant to this court's decision in Dzul v. State,² we conclude that Ferrell's Fifth Amendment right against self-incrimination was not violated. Accordingly, we affirm the judgment of conviction, and we find that Ferrell's remaining issue on appeal is without merit.

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Shearing

 _____, J.
Rose

 _____, J.
Becker

¹NRS 176.139(1) provides that where "a defendant is convicted of a sexual offense for which the suspension of sentence or the granting of probation is permitted, the division shall arrange for a psychosexual evaluation of the defendant as part of the division's presentence investigation and report to the court."

²118 Nev. ___, ___ P.3d ___ (Adv. Op. No. 71, ~~November~~ ^{October} 31, 2002). gck

cc: Hon. Jack Lehman, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk