

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON DAVID SERDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76837-COA

FILED

MAY 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jason David Serda appeals from a judgment of conviction entered pursuant to a guilty plea of domestic stalking and possession of a controlled substance. First Judicial District Court, Carson City; David R. Gamble, Senior Judge.

First, Serda argues the district court erred by denying his motion to continue the sentencing hearing to permit him to be sentenced by the same judge that accepted his guilty plea. "This court reviews a district court's decision regarding a motion for continuance for an abuse of discretion." *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). Serda does not have a right to be sentenced by the district court judge that accepted his guilty plea and Serda fails to demonstrate there was an express agreement that he would be sentenced by a particular district court judge. *See Dieudonne v. State*, 127 Nev. 1, 8, 245 P.3d 1202, 1207 (2011). Therefore, Serda fails to demonstrate the district court abused its discretion by denying his motion to continue the sentencing hearing.

Second, Serda argues the district court abused its discretion when imposing sentence. Serda contends the district court made up its mind concerning his sentence prior to hearing the parties' arguments or the

victim impact statements. Serda also asserts the district court improperly disregarded the recommendations contained within the presentence investigation report and the representative of the Division of Parole and Probation (Division) improperly informed the district court that she disagreed with some aspects of the Division's calculations for sentencing recommendations.


The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with the sentence imposed by the district court "[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." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

The record reveals the district court posed questions to the Division's representative concerning the scoring she used for her sentencing recommendation and the information she had concerning the impact the crime had on the victim. The district court questioned some of the Division's conclusions. The representative explained she was constrained by the scoring system she was required to use and stated the Division was working on getting a new scoring system. The district court then heard the arguments of the parties and stated "[i]s there anything you want to say to me, Mr. Serda, before I decide what I'm going to do?" The district court heard Serda's statement and the victim impact statement.

The district court then sentenced Serda to serve a term of 24 to 60 months in prison for the domestic stalking count, with a concurrent suspended sentence of 12 to 34 months and a term of probation not to exceed five years for the possession of a controlled substance count. The sentences imposed were within the parameters of the relevant statutes. See NRS 193.130(2)(c), (e); NRS 200.575(3); NRS 453.336(2)(a). Given the record before this court, Serda fails to demonstrate the district court had closed its mind to the presentation of the evidence at sentencing. See *Cameron*, 114 Nev. at 1283, 968 P.2d at 1171. In addition, the district court is not required to follow the sentencing recommendation of the Division, see *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972), and Serda does not demonstrate the district court based its sentencing decision on palpable or highly suspect evidence. Therefore, Serda fails to demonstrate the district court abused its discretion when imposing sentence.

Having concluded Serda is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David R. Gamble, Senior Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk