

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW PAUL LEAHY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75966

FILED

JUN 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yocum
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of attempted lewdness with a child under fourteen years of age. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

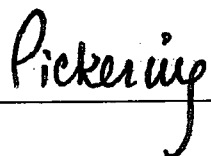
After accepting appellant Andrew Leahy's guilty plea, the district court sentenced him to two consecutive prison terms resulting in an aggregate 12 to 30 years. Leahy argues that the district court abused its discretion by sentencing him to a prison term greater than that recommended by the Division of Parole and Probation (Division). Specifically, Leahy argues that the district court deviated so drastically from the Division's recommendation that it must have ignored the report entirely. We disagree.

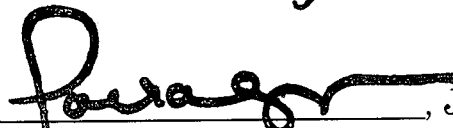
This court has consistently afforded district courts wide discretion in criminal sentencing decisions, *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009), and will not disturb a sentence that is within statutory limits unless the district court relied on "highly suspect or impalpable information," *Smith v. State*, 112 Nev. 871, 873, 920 P.2d 1002, 1003 (1996). Further, the district court does not abuse its discretion by imposing a sentence in excess of that suggested by the Division, as there is


no requirement to set the penalty in compliance with the Division's recommendations. *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972).

Leahy's sentence is within the statutory range prescribed for his offenses. See NRS 201.230 (defining lewdness with a child); NRS 193.330 (outlining attempt penalties). Furthermore, the record shows that the district court did not rely on unsupported facts or suspect evidence, but rather made its sentencing decision after considering arguments by counsel, Leahy's statement, victim impact statements, mitigating and aggravating factors, Leahy's psychological reports, and the Division's report. *Smith*, 112 Nev. at 873, 920 P.2d at 1003. Thus, we conclude that the district court did not abuse its discretion in sentencing Leahy in excess of the Division's recommendation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Cadish

cc: Hon. Alvin R. Kacin, District Judge
Lockie & Macfarlan, Ltd.
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk