

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HARVEY DEANDRE MCDANIELS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75074

**FILED**

JUL 17 2019

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

**ORDER OF AFFIRMANCE**

Harvey Deandre McDaniels appeals from a judgment of conviction, pursuant to an *Alford*<sup>1</sup> plea, of voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In exchange for McDaniels' plea, the State agreed to a stipulated sentence, not to refer McDaniels for federal prosecution, and McDaniels could withdraw his plea and proceed to trial should the district court not follow the negotiations. McDaniels agreed the State would be free to argue for any legal sentence should he fail to interview with the Division of Parole and Probation (P&P). McDaniels failed to interview with P&P, the State argued for the maximum possible sentence, and the district court imposed a sentence somewhere between the stipulated sentence and what the State argued for.

McDaniels contends the district court abused its discretion by rejecting the stipulated, conditional sentence. The district court has wide discretion in its sentencing decision. *Chavez v. State*, 125 Nev. 328, 348,

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

213 P.3d 476, 490 (2009). We will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes “[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).

The sentence imposed is within the parameters provided by the relevant statutes. See NRS 193.165(1); NRS 200.080. And McDaniels does not allege the district court relied on impalpable or highly suspect evidence. Further, as McDaniels acknowledged that he understood during his plea canvass, the district court was not bound by the plea agreement. For these reasons, we conclude the district court did not abuse its discretion by sentencing McDaniels to terms in excess of those in the plea agreement.


McDaniels also contends the district court abused its discretion by failing to afford him an opportunity to withdraw his plea when the district court did not impose the sentence to which the parties had stipulated. Assuming, without deciding, the conditional nature of the plea survived McDaniels’ failure to interview, his claim nevertheless fails. First, the conditional provision provides that McDaniels “*may* withdraw his plea” (emphasis added), but it imposes no duty on the district court to create a particular opportunity to allow him to do so. Second, McDaniels was sentenced on December 19, 2017, but his judgment of conviction was not filed until more than a month later, on January 24, 2018. McDaniels fails to indicate what further “opportunity” he should have been afforded. Finally, the record before this court contains no indication that McDaniels attempted to withdraw his guilty plea. We therefore conclude the district court did not abuse its discretion.

Finally, for the first time in his reply brief, McDaniels challenges the constitutionality of the clause that allowed the State to argue for any sentence should McDaniels fail to interview with P&P, as well as the State's right to invoke the clause. Because these arguments were not raised in McDaniels' opening brief, we do not consider them. See NRAP 28(c) (providing a reply brief "must be limited to answering any new matter set forth in the opposing brief"); *Browning v. State*, 120 Nev. 347, 368 n.53, 91 P.3d 39, 54 n.53 (2004).

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Valerie Adair, District Judge  
The Law Office of Dan M. Winder, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk