

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IAN MILES LISTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78318-COA

**FILED**

FEB 19 2020

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

*ORDER OF AFFIRMANCE*

Ian Miles Lister appeals from a judgment of conviction entered pursuant to a guilty plea, wherein he was convicted of sell, exchange, transfer, or give away of a schedule 1 or 2 controlled substance. First Judicial District Court, Carson City; James E. Wilson, Judge.

Lister argues the district court abused its discretion at sentencing by relying on impalpable and highly suspect evidence. Lister asserts that the methamphetamine that was absorbed into the liquid was not ingestible and not marketable and, therefore, the district court should not have considered the total weight of the two baggies of methamphetamine and the residual liquid when determining his sentence.


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).

The district court rejected Lister’s request for probation and imposed a prison term of 19 to 48 months. This sentence is within the

parameters provided by the relevant statute and those parameters are not dependent upon the amount of the controlled substance recovered. See NRS 453.321(2)(a) (providing for a sentence of not less than one year and not more than six years for a first offense). Although, prior to imposing sentence, the district court indicated that this case involved 28 grams of methamphetamine, it is clear from the record that the district court understood that this amount reflected the weight of the two plastic baggies along with the residual liquid. It was not improper for the district court to consider the total weight, including the residual liquid, when determining the sentence to be imposed, particularly where the weight of the controlled substance did not dictate the sentence that was permissible. See *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) ("Few limitations are imposed on a judge's right to consider evidence in imposing a sentence."); see generally *Sheriff, Humboldt Cty. v. Lang*, 104 Nev. 539, 543, 763 P.2d 56, 59 (1988) (holding that for the purposes of trafficking in a controlled substance, "the phrase '28 grams or more' refers to the aggregate weight of the entire mixture rather than the weight of the controlled substance that is contained in the mixture"). Therefore, we conclude Lister has not demonstrated the district court relied on impalpable or highly suspect evidence when imposing the sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. James E. Wilson, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk