

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JARROD MATTHEW TROUT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78982-COA

**FILED**

**MAY 11 2020**

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

*ORDER OF AFFIRMANCE*

Jarrold Matthew Trout appeals from a judgment of conviction entered pursuant to a guilty plea of possession of a controlled substance with intent to sell, sale of a controlled substance, conspiracy to violate the Uniform Controlled Substances Act, and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Trout claims the district court judge was biased and abused his discretion at sentencing by closing his mind to the presentation of all evidence before imposing sentence. Trout specifically asserts the judge made up his mind prior to the presentation of all evidence that Trout's sentences should run consecutively.

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 “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 of the evidence.” *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

At the initial sentencing hearing, the district court judge informed the parties that, because of the volume of drugs involved and the firearm, he was not inclined to follow any recommendation for concurrent time unless someone could give him a particularly good reason for that. The judge stated that he was informing counsel of his inclination at that time in case Trout’s counsel wanted to talk to Trout or possibly proceed with a motion to withdraw the plea. The judge stated that he would listen to Trout’s argument, but wanted to inform counsel of his inclination so they would not be blindsided. The judge then trailed the sentencing to give Trout’s counsel an opportunity to talk to Trout. Upon return, Trout’s counsel informed the court that she and Trout had discussed the issue and decided it would be best to take some time and continue the sentencing. The district court continued the sentencing hearing for three weeks.

At the next hearing, Trout’s counsel explained that Trout had always denied the gun was his and she told him to take the deal with the firearm charge because the firearm charge was better than some he could have faced. Counsel also explained that she had evidence to demonstrate that the gun was not Trout’s and presented that evidence. The deputy district attorney who negotiated the plea also explained that, in light of the



evidence that the gun was not Trout's, he had modified the plea offer. Trout's counsel then argued that if the judge was not inclined to follow the agreement of the parties, that the judge at least follow the recommendation of the Division of Parole and Probation, which was for concurrent sentences, but with a higher underlying sentencing range. The judge indicated that he would "ponder" the information and took a recess.


Upon returning from the recess, the court imposed sentence, ordering all sentences, except for the one for the firearm count, to run concurrently, and the sentence for the firearm count to run consecutively. The district court explained that although he appreciated the representations regarding the gun, Trout was a defendant who had previously been convicted of manufacture of a dangerous weapon and there were bullets located out in the open. As a result of this, the judge was not convinced of Trout's innocence in relation to the firearm charge. The judge also noted the fact that Trout was a five-time-convicted felon and in the instant case he had a concealed weapon next to him in the car. Based on this, the judge said he saw Trout as a threat to the community. The judge stated that he was inclined to impose a higher sentence for the firearm charge, but he changed his mind and imposed a shorter sentence based on counsel's representations.

We conclude the record in this case demonstrates the district court "remain[ed] open-minded enough to refrain from finally deciding [Trout's sentence] until all of the evidence ha[d] been presented." *Id.* (internal quotation marks omitted). Further, the sentences imposed are within the statutory limits, *see* NRS 193.130(2)(c), (d); NRS 202.360(1); NRS

453.321(2)(a); NRS 453.337(2)(a); NRS 453.401(1)(a), and Trout has not demonstrated the district court relied on impalpable or highly suspect evidence when imposing the sentence. Accordingly, we conclude the district court was not biased and did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Eric Johnson, District Judge  
Special Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk