

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL WESTLEY TIEHM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80168-COA

FILED

OCT 16 2020

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

ORDER OF AFFIRMANCE

Michael Westley Tiehm appeals from a judgment of conviction, entered pursuant to a guilty plea, of transporting a controlled substance. First Judicial District Court, Carson City; James E. Wilson, Judge.

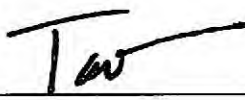
Tiehm contends the district court abused its discretion by basing his sentence upon the recommendation contained in the presentence investigation report ("PSI"). The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with 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). Tiehm has the burden of proving judicial reliance on impalpable or highly suspect evidence. *See Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978).

The sentence imposed, 2 to 6 years in prison, is within the parameters provided by the relevant statute. *See* NRS 453.321. Tiehm argues the PSI itself constituted impalpable and highly suspect evidence.

He disagrees with its characterization of his 11 prior misdemeanors and 2 prior felonies as "extensive criminal history" and its use of similar prior offenses to deviate upward in the sentencing recommendation. Tiehm concedes the district court did not state it was relying on the PSI recommendation when sentencing Tiehm. Tiehm thus fails to meet his burden of demonstrating the district court relied on impalpable or highly suspect evidence. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion. 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