

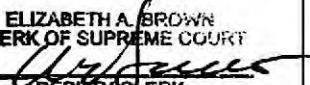
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAUL VELLA, A/K/A JUNIOR WELLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80672-COA

FILED

DEC 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Raul Vella appeals from a judgment of conviction, entered pursuant to a guilty plea, of two counts of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

First, Vella contends the district court judge abused her discretion by exhibiting improper bias during sentencing and closing her mind to the presentation of evidence. A district court judge's impartiality is reviewed de novo based on the uncontested facts. *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). We presume a district court judge is impartial, and therefore, Vella has the burden of demonstrating disqualification was warranted. *See id.* Additionally, "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 the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Vella argues the district court judge exhibited bias by refusing to hear how Vella felt about his attorney, refusing to hear the circumstances of his plea, and asking questions about Vella's child. The record indicates

the judge heard Vella's version of the circumstances of the crime and asked Vella follow-up questions regarding what he had done since his last release from prison. These included clarifying questions about Vella's child. The judge's actions and questions do not show she had closed her mind to the presentation of all the evidence. Therefore, we conclude Vella has failed to demonstrate the district court judge exhibited bias during sentencing.

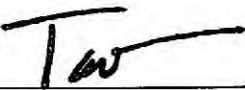
Second, Vella contends the district court abused its discretion by relying on impalpable evidence during sentencing. The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). We will not interfere with a sentence imposed by 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). Additionally, during sentencing, the district court is privileged to consider facts that would be inadmissible at trial. *Id.* at 93-94, 545 P.2d at 1161.

The record reflects that the district court asked clarifying questions regarding Vella's ability to support himself and his child since Vella's last release from prison, as well as questions regarding the child's age. Vella does not explain how his responses to these questions were impalpable. He also fails to demonstrate prejudice: He has not demonstrated his responses influenced the district court's sentencing decision. Rather, the concurrent terms of 28 to 72 months in prison, which are within the parameters provided by the relevant statute, *see* NRS

202.360(1), are nearly what Vella requested at the sentencing hearing.¹ Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Vella. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Vella requested concurrent terms of 24 to 72 months in prison. In contrast, the State argued for 48 to 120 months in prison.