

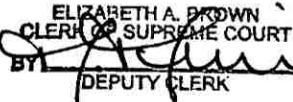
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AUGUST ANTON PETERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84463-COA

FILED

NOV 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

August Anton Peters appeals from a judgment of conviction, entered pursuant to a guilty plea, of voluntary manslaughter. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

First, Peters argues the district court abused its discretion by admitting at sentencing a recorded jailhouse phone call between Peters and his dad. Peters argues that the phone call was not properly and legally recorded because it was an illegal wire intercept in violation of NRS 179.410-.500. He also argues that recording the phone call violated attorney-client privilege and that the call should not have been admitted because statements made during plea negotiations are not admissible in criminal proceedings pursuant to NRS 48.125.¹

Peters failed to demonstrate the phone call was not properly and legally recorded, because the parties to the phone call were informed the phone call was being recorded and both parties continued with the

¹Peters also argues that the recording violated his equal protection rights. He did not raise this argument below; therefore, we decline to consider it for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

conversation. *See Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (holding that a communication may be lawfully intercepted where both parties consent to the interception). Further, Peters failed to demonstrate the recording violated attorney-client privilege because the call was not between Peters and his attorney. *See* NRS 49.095. The admission of the recording also did not violate NRS 48.125 because that statute pertains to plea offers not accepted or guilty pleas that are withdrawn. Here, Peters accepted the plea that was offered. Therefore, we conclude the district court did not abuse its discretion by admitting the phone recording.

Second, Peters argues the district court abused its discretion by declining to place Peters on probation and instead sentencing him to serve 48 to 120 months in prison. Peters argues the district court failed to conduct an individualized sentencing by not considering his mitigation evidence, not considering the misconduct committed by a detective, and not giving a reason for the particular sentence imposed.

The granting of probation is discretionary. *See* NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). Generally, this court 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); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Peters' sentence is within the parameters provided by the relevant statute, *see* NRS 200.080, and Peters does not allege that the district court relied on impalpable or highly suspect evidence. The record demonstrates that the district court heard the parties' sentencing arguments, including Peters' counsel's argument noting Peters' lack of criminal history. The district court also considered the testimony of witnesses to the crime and witnesses in mitigation, a victim impact statement, the sentencing memorandum, and the presentence investigation report. Further, while counsel was denied the admission of records detailing the police detective's alleged misdeeds, counsel was able to make argument regarding the detective's actions. Finally, the district court is not required to give its reasons for imposing a particular sentence. *See Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998). Given this record, we conclude Peters has failed to demonstrate that the district court abused its discretion by declining to suspend the sentence and place Peters on probation. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk

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