IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEITH DEON BROMFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83748-COA

ORDER OF AFFIRMANCE

Keith Deon Bromfield appeals pursuant to NRAP 4(c) from a judgment of conviction entered pursuant to a guilty plea of four counts of felony battery constituting domestic violence. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

First, Bromfield argues that the Presentence Investigation Report (PSI) contained errors because the Division of Parole and Probation incorrectly scored the Probation Success Probability (PSP) form and he therefore seeks amendment of the PSI and the PSP form to correct the alleged errors. Bromfield contends that the PSP form incorrectly included points for use of a weapon when the charges to which he pleaded guilty did not include use of a weapon, and he asserts the form should be recalculated with the correct information.

"A defendant has the right to object to factual or methodological errors in sentencing forms, so long as he or she objects before sentencing, and allows the district court to strike information that is based on impalpable or highly suspect evidence." *Blankenship v. State*, 132 Nev. 500, 508, 375 P.3d 407, 412 (2016) (brackets and quotation marks omitted). "It is clear that any objections that the defendant has must be resolved prior to

sentencing." *Id.* (brackets and internal quotation marks omitted). Because Bromfield did not object to the PSP form before the district court, he fails to demonstrate that he is entitled to an alteration of the form or the PSI. Therefore, Bromfield is not entitled to relief based on this claim.

Second, Bromfield argues that the district court abused its discretion when it imposed sentence because his sentence constitutes cruel and unusual punishment. Bromfield contends that the sentence is disproportionate to the crimes, it is greater than the sentence requested by the State, and the district court did not provide an appropriate basis for its decision to impose such a lengthy sentence. Bromfield also asserts that the district court abused its discretion at sentencing because it relied upon the erroneous deadly weapon information contained in the PSI and the PSP form.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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). Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-

01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

At the sentencing hearing, the district court listened to the arguments of the parties, which included information concerning Bromfield's lengthy prior criminal history and drug use. The State also informed the district court that Bromfield continued to contact the victim in this matter despite orders to refrain from such activity. The district court noted that Bromfield acknowledged that he used methamphetamine but that he also denied having a problem with drug use. The district court subsequently adjudicated Bromfield as a habitual criminal, sentenced him pursuant to the small habitual criminal enhancement, and imposed four consecutive terms of 96 to 240 months in prison.

The sentence was within the parameters provided by the relevant statutes, *see* NRS 176.035(1), 2009 Nev. Stat., ch. 156, § 1, at 567 (NRS 207.010), and Bromfield does not allege that those statutes are unconstitutional. Moreover, Bromfield does not demonstrate that the district court erred by declining to follow the recommendation of the parties, *see Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972), or by failing to articulate the basis for its sentencing decision, *see Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998).

In addition, the district court did not mention the PSI sentencing recommendation or the PSP form when it imposed sentence. Further, the allegations in this matter included Bromfield's use of a knife during the commission of the crimes, and Bromfield does not demonstrate that consideration of the circumstances surrounding the offenses amounted to consideration of impalpable or highly suspect evidence. *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" and "[p]ossession of the fullest information possible concerning a defendant's life and characteristics is essential to the sentencing judge's task of determining the type and extent of punishment."). Accordingly, Bromfield does not demonstrate that the district court relied on impalpable or highly suspect evidence when it imposed sentence.

We have considered the sentence and the crimes, and we conclude the sentence imposed is not grossly disproportionate to the crimes, it does not constitute cruel and unusual punishment, and the district court did not abuse its discretion when imposing sentence. Therefore, we conclude that Bromfield is not entitled to relief based on this claim.

Third, Bromfield argues the district court erred by denying his claim that his guilty plea was invalid, because he did not understand the possible sentences he faced by entry of his plea and that he could receive consecutive sentencing terms.[1] "To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea." NRS 176.165. "This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the

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[1]Bromfield had filed a postconviction petition for a writ of habeas corpus, and in that petition, he asserted he was improperly deprived of a direct appeal and also challenged the validity of his guilty plea. The district court conducted an evidentiary hearing concerning the petition and concluded that Bromfield was improperly deprived of a direct appeal but was not entitled to relief concerning his challenge to the validity of his guilty plea.

consequences of the plea." *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

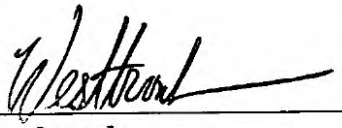
During the plea canvass, counsel informed the trial-level court that he had reviewed the plea agreement with Bromfield and explained the potential sentences Bromfield faced if he were to be adjudicated as a habitual criminal. In the written plea agreement, Bromfield acknowledged that he understood the potential sentences he faced if he was sentenced under the habitual criminal enhancement. Bromfield also acknowledged in the written plea agreement that he understood that the sentencing court had the discretion to sentence him to serve consecutive terms.

In light of the plea canvass and the written plea agreement, the totality of the circumstances demonstrate that Bromfield's guilty plea was knowingly and voluntarily made and that he understood the consequences of his guilty plea. Bromfield accordingly did not demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. David M. Jones, District Judge
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk