


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELOY SALAS-LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86157-COA

FILED

JAN 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eloy Salas-Lopez appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted sexual assault against a child under 16 years of age. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Salas-Lopez argues the district court abused its discretion by imposing a sentence of 4 to 10 years in prison because it relied on impalpable and highly suspect evidence regarding his risk of sexual recidivism. 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). “This court will not vacate a . . . sentencing decision unless the error

affected the defendant's substantial rights." *Aparicio v. State*, 137 Nev. 616, 620, 496 P.3d 592, 596 (2021); *see also* NRS 178.598.

Salas-Lopez contends that the State erroneously suggested that he had a 30 percent risk of committing a similar offense, when the psychosexual assessment indicates his risk of sexual recidivism is between 5.3 and 9.4 percent. At the sentencing hearing, the State informed the court that, at one point, one-fourth of the prosecutor's cases involving crimes against children involved defendants who had prior convictions for sexual crimes against children. Shortly thereafter, the State told the court that Salas-Lopez had "up to a 30 percent risk of recidivism."

In context, the State's comments improperly suggested that Salas-Lopez had an approximately 30 percent risk of sexual recidivism. However, there is no indication in the record that the district court relied upon such a suggestion in making its sentencing decision. Indeed, in making its sentencing decision, the district court recognized that Salas-Lopez was not a high risk to reoffend under the psychosexual assessment, which indicated that Salas-Lopez's risk of sexual recidivism within five years was approximately 5.3%. The district court also explicitly considered Salas-Lopez's mitigating factors and determined they did not outweigh the seriousness of the offense, which could have resulted in multiple sentences of 35 years to life in prison as initially charged. Finally, we note that the State agreed to cap its sentencing argument to 3 to 16 years in prison, and although the district court imposed a minimum term that was one year longer than the State's recommendation, it imposed a maximum term that

was six years shorter. Therefore, Salas-Lopez fails to demonstrate any error affected his substantial rights. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk