

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSBALDO SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70187

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY:  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to an *Alford*¹ plea of child abuse, neglect, or endangerment causing substantial bodily harm. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appellant Osbaldo Sanchez claims the State committed prosecutorial misconduct at sentencing by speculating about his juvenile record. This court reviews unpreserved claims of prosecutorial misconduct for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). “[A]n error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice.” *Id.* (internal quotation marks omitted).

We conclude the State erred by speculating regarding Sanchez’s juvenile history. However, Sanchez fails to demonstrate the error affected his substantial rights. The district court stated at the hearing, it based its sentencing determination on the specific facts of this

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

crime and the horrific injuries suffered by the child victim. Therefore, the error did not affect his substantial rights and we conclude Sanchez is not entitled to relief.

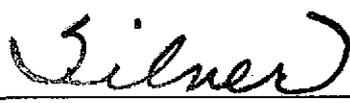
Sanchez also claims the district court abused its discretion by failing to disclaim reliance on the State's improper speculation regarding his juvenile history. "A district court is vested with wide discretion regarding sentencing," and "[f]ew limitations are imposed on a judge's right to consider evidence in imposing a sentence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). However, "this court will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Id.*

Sanchez fails to demonstrate the district court relied on the State's speculation regarding his juvenile history. As stated above, the district court based its sentencing determination on the facts of the crime and the injuries to the child victim. Therefore, Sanchez fails to demonstrate the district court relied solely on impalpable and highly suspect evidence when imposing sentence. We conclude the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Scotti, District Judge
Coyer Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk