

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SALVATORE WILLIAM MIELE,

No. 83039

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Clerk of Supreme Court

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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**RESPONDENT'S ANSWERING BRIEF**

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## **TABLE OF CONTENTS**

I.	STATEMENT OF ISSUES .....	1
II.	STATEMENT OF FACTS .....	1
	A. The offense.....	1
	B. Entry of plea and sentencing. ....	3
III.	SUMMARY OF ARGUMENT.....	7
IV.	ARGUMENT .....	8
	A. Standard of Review.....	8
	B. The district court did not abuse its sentencing discretion here. ....	8
V.	CONCLUSION .....	11

## **TABLE OF AUTHORITIES**

### **Pages**

#### **Cases**

<i>Cameron v. State</i> , 114 Nev. 1281, 1283, 968 P.3d 1169, 1171 (1998) .....	9, 10
<i>Denson v. State</i> , 112 Nev. 489, 492, 915 P.2d 476, 490 (2009) .....	10
<i>Houk v. State</i> , 103 Nev. 659, 747 P.2d 1376 (1987) .....	8
<i>Silks v. State</i> , 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) .....	8

#### **Rules**

NRAP 28(b) .....	1
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**RESPONDENT'S ANSWERING BRIEF**

**I. STATEMENT OF ISSUES<sup>1</sup>**

The district court did not abuse its discretion at sentencing because it did not limit its consideration of mitigation evidence in this case.

**II. STATEMENT OF FACTS**

**A. The offense.<sup>2</sup>**

On September 6, 2020, the victim and her friends, including Miele were at Lake Tahoe drinking. At one point the group went to a local bar to

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<sup>1</sup> The State agrees with Appellant Salvatore William Miele's (hereinafter, "Miele") Statement of Jurisdiction, Routing Statement, and Statement of the Case. Therefore, those matters will not be repeated herein. NRAP 28(b).

<sup>2</sup> These facts are taken from page 5 of the Presentence Investigation Report ("PSI"), which the State is contemporaneously moving to transmit.

continue drinking. The manager of the bar recalled that the victim arrived wearing only a t-shirt and bathing suit bottoms and that she was extremely intoxicated. The bar refused to serve her alcohol and when she left she was unable to walk on her own. She had to be assisted by Miele and another individual. The victim later recalled leaving the bar and going to a nearby residence, where she vomited and “blacked out.” The victim did not recall anything further happening, but awoke the next morning naked from the waist down and next to Miele. After showering, the victim went to the hospital and presented with vaginal soreness and bleeding.

Later that day, Miele arrived at the Reno Police Department for a voluntary interview. At first, he stated the contact between the victim and him was consensual and that she seemed to know what was going on. However, later Miele described the victim’s intoxication level as a ten on a one to ten scale, with ten being completely unable to understand what was going on. Miele also indicated that the victim was unable to remove her own clothing during the encounter and that he removed her clothing for her. Miele admitted to digitally penetrating the victim’s vagina, as well as penetrating her vagina with his penis.

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B. Entry of plea and sentencing.

Miele was originally charged with sexual assault, but after eight months of negotiations the parties reached a plea agreement involving a single charge of coercion with physical force or immediate threat of physical force. *See* Joint Appendix (“JA”) 67, 74-78. Sex offender registration was not important to the victim in this case, but she did want Miele to serve time in prison. *Id.* at 74-78. As part of the negotiations, Miele agreed that he would not argue for probation, but would instead recommend a term in prison. *Id.* at 6, 13. The parties were free to argue for the length of the prison term. *Id.*

On January 11, 2021, Miele pleaded guilty to the single charge of coercion with physical force or immediate threat of physical force, a category B felony. *Id.* at 10, 14, 17. Miele was out of custody at the time of the arraignment and the State did not object to him remaining out of custody until sentencing because he had been cooperative with pretrial services and was hoping to obtain prescriptions for certain medication prior to going to prison. *Id.* at 17-21. Miele was ordered to self-surrender to the Washoe County Jail on or before May 8, 2021. *Id.* at 20.

Miele surrendered as ordered and the sentencing occurred on May 10, 2021. *Id.* at 55. In advance of the sentencing hearing, Miele’s counsel

submitted 17 letters from friends, colleagues, and family for the district court's consideration. *Id.* at 24-54. The letters generally described Miele as a good person who made a mistake. *See id.* at 24-54, 61-62. At the outset of the sentencing hearing, the district court indicated that it read each letter and "[did not] doubt the authenticity and goodwill of the authors." *Id.* The district court further observed that people are not "binary." *Id.* at 57. It noted that, "Mr. Miele can be all of the things he was described in those letters" and have committed the offense at issue. *Id.* The court noted it would benefit from counsels' assistance with the appropriate sentence in this case. *Id.* at 57-58.

Miele spoke first at sentencing and in a short statement apologized "to everybody that's been affected by my actions" and described the incident as a "mistake that shouldn't have happened," but noted that he did not want "it to reflect on who I am personally for the rest of my life." *Id.* at 59. The apparent theme of Miele's counsel's argument was that "mistakes don't define your character, it's what you do after you've made the mistake that makes all the difference." *Id.* at 60. Counsel emphasized Miele's character as described by the letters submitted in his support, his pretrial compliance, his family and friend support, and his limited criminal history to argue for the minimum sentence of 12 to 36 months in prison. *Id.* at 59-

67. The district court commended Miele's counsel on the argument. *Id.* at 67.

The State argued for the maximum sentence of 28 to 72 months in prison. *Id.* at 67-72. At the conclusion of the argument, the prosecutor read a statement from the victim's father, who expressed anger with Miele because Miele "raped" his daughter and asked that the court impose the maximum sentence. *Id.* at 70-72.

Miele's counsel responded to the victim's father's characterization of the crime as "rape" and urged the district court to sentence Miele for the crime he pleaded guilty to, not for sexual assault. *Id.* at 72. Miele's counsel argued that the court must "take into account not only the victim's wishes, but also the mitigation of Mr. Miele with regards to his youth, with regards to his employment, with regards to his ability to leave prison and be a productive member of society." *Id.*

The district court responded by asking the State more about its charging and negotiating decisions. *Id.* at 73-78. It again emphasized the argument made by defense counsel, noting it was "a very authentic, holistic, compassionate argument on behalf of her client." *Id.* at 73. The district court inquired whether counsel's advocacy informed the prosecutor's decision to "back off the initial charge?" *Id.* at 73. The prosecutor agreed



that the things that Miele's counsel argued were part of the consideration, as well as the victim's wishes went into the State's negotiations. *Id.* at 73-74. After further inquiry, the prosecutor agreed that the mitigation presented by Miele's attorney influenced her decision to negotiate the charge to something other than sexual assault, because such a charge does not allow for discretion in terms of a sentence. *Id.* at 74-76. The prosecutor indicated that she always believed this was a case where a two, three, or four year sentence was appropriate, so part of her analysis and the negotiations was finding a charge that fit within that sentencing range and did not necessarily require registration, since the victim did not want Miele to have to register as a sex offender. *Id.*

The district court indicated that it was "fully informed... and ready to go," but gave Miele's counsel an opportunity to respond to the court's questions. *Id.* at 77. Miele's counsel emphasized that certain mitigation was contemplated in the negotiations, but that the court should also consider the other mitigation information that occurred after the entry of plea, such as Miele's continued employment, compliance with pretrial services, etc. *Id.* at 77-78. At the conclusion of Miele's counsel's response, she emphasized that "mitigation continued after [negotiations] as well." *Id.* at 78. The court responded, "[w]hich is what I was looking for...." *Id.* at 78.

Before imposing its sentence, the court noted that:

...my decision does not invalidate anything that [defense counsel] argued. It's a reconciliation of all of the information that's in front of me, to include the narrative set forth in the Presentence Investigation Report, which neither one of you emphasized. I didn't need you to emphasize it. I read it. But the summary of the factual offense is—it's deeper than the single description of – the word "mistake" does not fully encapsulate what I read in the Presentence Investigation Report. There's a depth to this event that I need to acknowledge.

*Id.* at 79.

The court sentenced Miele to 28 to 72 months in the Nevada Department of Corrections, along with associated fines and fees. The district court concluded that its sentence "reflects a reconciliation and the justice that is required in this case." *Id.* at 80.

### III. SUMMARY OF ARGUMENT

Miele contends that the district court abused its sentencing discretion by ignoring the mitigation evidence. However, the record does not support Miele's assertion. The district court noted that its decision was based on all of the information before it, but it thought the maximum sentence was appropriate in this case because of the facts of the offense. The district court did not abuse its discretion here.

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#### IV. ARGUMENT

##### A. Standard of Review.

The Nevada Supreme Court has consistently afforded district courts wide discretion in their sentencing decisions. *See Houk v. State*, 103 Nev. 659, 747 P.2d 1376 (1987). Appellate Courts will refrain from interfering with the sentence imposed "[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).

##### B. The district court did not abuse its sentencing discretion here.

At the outset, it is important to note that Miele does not contend that the district court's decision was based on impalpable or highly suspect evidence. Nor does Miele argue that his sentence is beyond the statutory range. Miele's sole contention is that the district court abused its discretion at sentencing because it did not consider the same mitigation the prosecutor considered as part of negotiations when it made its sentencing decision.

Miele's argument relies on selective quotes from the district court taken out of context. When examining allegations of judicial bias or prejudice, the Nevada Supreme Court has held that "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.3d 1169, 1171 (1998). Here, the district court never stated that it would not consider all of the mitigation evidence presented in reaching its decision. *See* JA 57-80. It simply inquired about the prosecutor’s consideration of the mitigation argument in negotiations. *Id.* at 73-80. Miele assumes that the district court did not consider all of the mitigation evidence because of its inquiries. Miele is mistaken.

When the record is viewed as a whole, there is no question that the district court considered all of the information before it, including all of the mitigation presented, before it imposed Miele’s sentence. The district court began the sentencing hearing by noting that it had reviewed all of the letters offered in support of Miele. *Id.* at 57-58. It commended Miele’s counsel a few separate times on her sentencing argument. *Id.* at 67, 73, 79. Miele asserts that the court cut off his counsel when she was arguing as evidence of the district court’s failure to consider mitigation evidence, but that occurred during a rebuttal argument and immediately after the court stopped Miele’s counsel for going beyond a rebuttal argument, counsel had an opportunity to address mitigation again. Miele’s counsel noted that

mitigation continued after negotiations. *Id.* at 78. The district court apparently agreed and responded, “[w]hich is what I was looking for....” *Id.* Further, immediately before imposing its sentence, the district court noted that its “decision does not invalidate anything that [defense counsel] argued” and that its decision was a “reconciliation of all of the information that’s in front of me....” *Id.* at 79. Thus, Miele’s selective recitation of the district court’s remarks at sentencing should not lead this Court to the conclusion that the district court closed its mind to the mitigation evidence in this case. *See Cameron*, 114 Nev. at 1283, 968 P.3d at 1171. The complete record does not support such a conclusion.

The district court did not impose the maximum sentence in this case because it ignored the defense’s mitigation presentation. The district court made it clear that it considered all of the information before it, which is consistent with the Nevada law. *See Denson v. State*, 112 Nev. 489, 492, 915 P.2d 476, 490 (2009) (“Possession 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.”). However, the district court noted that it was particularly struck by the facts of the case and did not find that the word “mistake” fully encapsulated what occurred. JA 79. The district court found that “there is

a depth to this event that I need to acknowledge” and the sentence represented a “reconciliation and the justice that is required in this case.” *Id.* at 79, 80. This is a legitimate basis for the sentencing court to consider. As such, Miele has not shown an abuse of discretion here.

V. CONCLUSION

Based on the foregoing, the State respectfully requests that the judgment of conviction be affirmed.

DATED: November 4, 2021.

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DISTRICT ATTORNEY

By: MARILEE CATE  
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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: November 4, 2021.

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 4, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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