MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

DAVID JOSE ESCALONA

APPELLANT.

DOCKET NUMBER WD83807

DATE: March 30, 2021

Appeal From:

Lafayette County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

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Attorneys:

Julia E. Rives, Jefferson City, MO, for respondent.

Ellen H. Flottman, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
DAVID JOSE ESCALONA, APPELLANT.

WD83807 Lafayette County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, Gary D. Witt, Judge, and Anthony Rex Gabbert, Judge

David Escalona ("Escalona") appeals the judgment of the Circuit Court of Lafayette County, Missouri ("trial court") convicting him of one count of possession of a controlled substance, section 579.015, and one count of failure to appear, section 544.665, arguing the trial court plainly erred and abused its discretion in basing Escalona's sentence on the fact that he exercised his right to go to trial rather than plead guilty.

AFFIRMED.

Division Three holds:

Although a sentencing court may not use the sentencing process to punish a defendant for exercising his right to trial, a sentencing court may "take into account the character of the defendant, including his attitude concerning the offense." *State v. Lindsey*, 996 S.W.2d 577, 580 (Mo. App. W.D. 1999). A court may also "take into account a good faith belief that an accused has committed perjury." *Id.* at 581. In this case, the trial court expressly stated that it "never" sentenced a criminal defendant more harshly because he exercised his right to trial, but it also found that Escalona had failed to take responsibility for his actions in the sentencing assessment (SAR) and found that he had likely committed perjury at his bench trial. We find no plain error in these findings by the trial court.

Opinion by: Gary D. Witt, Judge March 30, 2021

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