

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID JOSEPH MATTHEWS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42891

FILED

JUN 14 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of one count of theft. The district court sentenced appellant to a prison term of 12 to 48 months. The district court suspended the prison sentence and placed appellant on probation for a period not to exceed 60 months.

Appellant's sole contention is that the district court abused its discretion at sentencing. Specifically, appellant contends that he should have been placed in a diversionary program pursuant to NRS 458.330(1).¹ We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.² This court 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."³ Moreover, a sentence within the statutory limits is not

¹NRS 458.330 provides that sentencing may be deferred, and upon successful completion of a treatment program, the conviction is set aside.

²See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

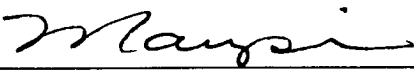
cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

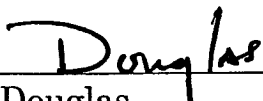
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁵ Moreover, placement in a diversion program is discretionary.⁶

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁴Blume 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)).

⁵See NRS 205.0835(3); NRS 193.130(2)(c).

⁶See NRS 458.320(3) (providing that the district court may defer sentencing and place an individual in a treatment program).

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk