

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY W. JOINER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43128

FILED

SEP 07 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Timothy W. Joiner to serve a prison term of 72 to 180 months.

Joiner contends that the district court abused its discretion at sentencing in refusing to grant probation. Joiner argues that the sentence is too harsh given that he had a long history of drug addiction and had finally expressed his willingness to seek long term, inpatient drug treatment. Citing to the dissent in Tanksley v. State,¹ Joiner asks this court to review the sentence to see that justice was done. We conclude that Joiner's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and 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

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

founded on facts supported only by impalpable or highly suspect evidence.”² Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.³

In the instant case, Joiner does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁴ Moreover, the granting of probation is discretionary.⁵ Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience; although Joiner received the maximum sentence for robbery, he had an extensive criminal history and the instant offense involved an elderly victim. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


³Blume 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)).


⁴See NRS 200.380(2) (providing for a prison sentence of 2 to 15 years).

⁵See NRS 176A.100(1)(c).

Having considered Joiner's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk