

IN THE SUPREME COURT OF THE STATE OF NEVADA

MACK A. BRASSELL A/K/A  
MACARTHUR BRASSELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43445

**FILED**

NOV 04 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony domestic battery. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Mack A. Brassell to serve a prison term of 12 to 48 months to run concurrently with any other sentence Brassell was serving.

Brassell first contends that the district court abused its discretion because the sentence imposed is too harsh given the fact that, pursuant to the plea agreement, the State only recommended a sentence of 12 to 30 months. Additionally, Brassell contends that the district court erred at sentencing by failing to explain, on the record, its justification for the harsh sentence. Citing to the dissent in Tanksley v. State,<sup>1</sup> Brassell asks this court to review the sentence imposed to see that justice was done. We conclude that Brassell's contentions are 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

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<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."<sup>2</sup> 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.<sup>3</sup>

In the instant case, Brassell does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>4</sup> Moreover, we do not presume that a district court abused its sentencing discretion merely because it failed to explain, on the record, its justification for imposing a particular sentence.<sup>5</sup> Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Brassell also alleges, for the first time on direct appeal, that he is entitled to credit for time spent in presentence confinement pursuant

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

<sup>3</sup>Blume 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)).

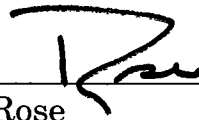
<sup>4</sup>See NRS 200.485(1)(c), NRS 193.130(2)(c) (providing for a prison sentence of 1 to 5 years).

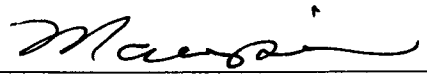
<sup>5</sup>See generally Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

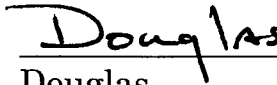
to Johnson v. State.<sup>6</sup> We decline to consider Brassell's contention because he failed to raise this issue in the district court. We note, however, that Brassell may seek credit for time spent in custody prior to sentencing by filing a post-conviction petition for a writ of habeas corpus in the district court.<sup>7</sup>

Having considered Brassell's contentions and concluded that they either lack merit or are inappropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Brent T. Adams, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>6</sup>120 Nev. \_\_\_, 89 P.3d 669 (2004).

<sup>7</sup>See NRS 34.724(2)(c); Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), clarified on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).