

IN THE SUPREME COURT OF THE STATE OF NEVADA


ANTONIO TONY TERRELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43576

FILED

NOV 17 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a dangerous weapon by an incarcerated person. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Antonio Tony Terrell to serve a prison term of 24 to 60 months to run concurrently to the sentence imposed in an unrelated case.

Terrell contends that the district court abused its discretion at sentencing in refusing to grant probation. Terrell argues that the sentence is too harsh given that he had recently taken significant steps to rehabilitate himself in prison and that the weapon involved was a razor, which he used for shaving his head. Citing to the dissent in Tanksley v. State,<sup>1</sup> Terrell asks this court to review the sentence to see that justice was done. We conclude that Terrell'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

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

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.”<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, Terrell 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.<sup>4</sup> Moreover, the granting of probation is discretionary.<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.

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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).

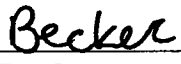
<sup>3</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).


<sup>4</sup>See NRS 212.185(1)(g) (providing for a prison sentence of 1 to 6 years).

<sup>5</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Steven P. Elliott, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk