

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN KAHN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43760

FILED

JAN 19 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of uttering a forged instrument. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Alan Kahn to serve a prison term of 12 to 34 months.

Kahn contends that the district court abused its discretion at sentencing in refusing to grant probation. Kahn argues that the sentence is too harsh given that he had a long history of drug addiction and was willing to attend long-term, inpatient drug treatment. Citing to the dissent in Tanksley v. State,¹ Kahn asks this court to review the sentence to see that justice was done. We conclude that Kahn'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, Kahn 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.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 Kahn did not receive probation, he had a significant criminal history and had previously failed to successfully complete terms of probation. 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).

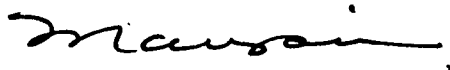
³Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

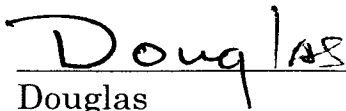
⁴See NRS 205.090; 193.130(2)(d) (providing for a prison sentence of 1 to 4 years).

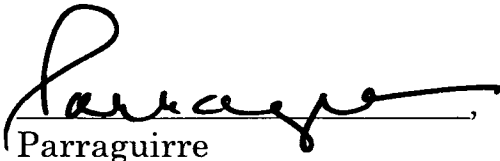
⁵See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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