

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DOUGLAS MCNAIR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43770

FILED

JAN 19 2005

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 uttering a forged instrument. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant John Douglas McNair to serve a prison term of 12 to 40 months.

McNair contends that the district court abused its discretion at sentencing in refusing to grant probation. McNair argues that the sentence is too harsh given that he had a severe drug addiction and was willing to attend long-term, inpatient drug treatment. Citing to the dissent in Tanksley v. State,<sup>1</sup> McNair asks this court to review the sentence to see that justice was done. We conclude that McNair'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

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

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, McNair 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, 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; although McNair did not receive probation, he had a prior criminal history and had previously failed to complete a term of probation. 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)).

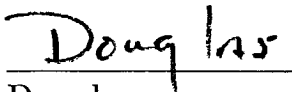
<sup>4</sup>See NRS 205.090; 193.130(2)(d) (providing for a prison sentence of 1 to 4 years).

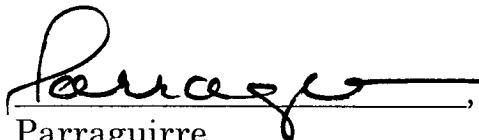
<sup>5</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

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