

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANDIS DOMINO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43855

**FILED**

DEC 10 2004

ORDER OF AFFIRMANCE

JACQUELINE BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
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; Brent T. Adams, Judge. The district court sentenced appellant Landis Domino to serve a prison term of 19-48 months.

Domino's sole contention on appeal is that the district court abused its discretion at sentencing. Domino claims that "[t]he best protection society could get" would be achieved if the district court suspended his sentence and placed him in "a strict, long term, in-patient treatment facility" so that he could resolve his substance abuse problems. Domino argues that the district court failed to exercise any discretion and merely followed the sentencing recommendation offered by the Division of Parole and Probation. Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Domino contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Domino's contention is without merit.

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

<sup>2</sup>107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.<sup>3</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> The district court's discretion, however, is not limitless.<sup>5</sup> Nevertheless, we 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 founded on facts supported only by impalpable or highly suspect evidence."<sup>6</sup> Despite 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>7</sup>

In the instant case, Domino does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

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<sup>3</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>4</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>5</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

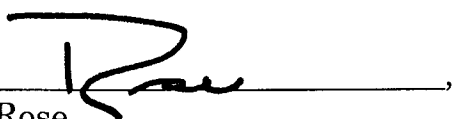
<sup>6</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

<sup>7</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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

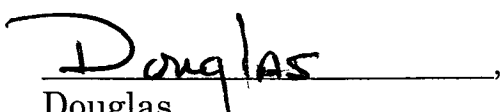
statutes.<sup>8</sup> Further, the presentence investigation report prepared by the Division of Parole and Probation detailed Domino's criminal history, which included four prior felony convictions, a misdemeanor conviction, several arrests without disposition, numerous revoked terms of probation, and a dishonorable discharge from parole. Additionally, we note that the granting of probation is discretionary.<sup>9</sup> Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Domino's contention and concluded that it is without merit, 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>8</sup>See NRS 205.110; NRS 205.090; NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years).

<sup>9</sup>See NRS 176A.100(1)(c).