

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESLIE TOMBOW,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44065

FILED

FEB 15 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of using the personal identification information of another. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Leslie Tombow to serve a prison term of 22 to 96 months.

Tombow contends that the district court abused its discretion at sentencing in refusing to grant probation. Specifically, Tombow argues that the sentence imposed is too harsh given that he "had a place to live, employment, two teenaged children to support, and the unusual factor of no alcohol or drug abuse."<sup>1</sup> Additionally, Tombow argues that the district court abdicated its discretion by imposing the sentence recommended by the Division of Parole and Probation. Citing to the dissent in Tanksley v.

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<sup>1</sup>Tombow notes that he is a professional pilot, who had no criminal history until April 2003, when he became "'bankrupted' during his divorce, then had difficulty with the economy and his flying career since [the terrorist attacks on] September 11, 2001."

State,<sup>2</sup> Tombow asks this court to review the sentence to see that justice was done. We conclude that Tombow's contentions lack 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 founded on facts supported only by impalpable or highly suspect evidence.”<sup>3</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>4</sup>

In the instant case, Tombow 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>5</sup> and that the granting of probation is discretionary.<sup>6</sup> Moreover, the sentence imposed is not so unreasonably disproportionate to the crime as to shock

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

<sup>3</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>4</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>5</sup>See NRS 205.463(1)(b) (providing for a prison sentence of 1 to 20 years).

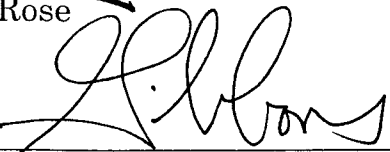
<sup>6</sup>See NRS 176A.100(1)(c).


the conscience: Tombow admitted that he charged approximately \$15,000.00 on another individual's credit card and, at the time of sentencing, Tombow had two prior felony convictions. Finally, we conclude that the mere fact that the district court imposed the sentence recommended by the Division of Parole and Probation does not demonstrate that the court failed to exercise its sentencing discretion. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Tombow's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Hardesty

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