

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICOLE DRAKE CHRISTIANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44784

FILED

AUG 24 2005

ORDER OF AFFIRMANCE

WANG TO M. NELSON
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of using the personal identification of another. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Nicole Drake Christiano to serve a prison term of 22 to 75 months.

Christiano contends that the district court abused its discretion at sentencing by refusing to grant probation. Christiano argues that the sentence is too harsh given that she suffered from a drug problem and had only a minimal criminal history. Citing to the dissent in Tanksley v. State,¹ Christiano asks this court to review the sentence to see that justice was done. We conclude that Christiano'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 founded on facts supported only by impalpable or highly suspect

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

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, Christiano 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.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. In imposing sentence, the district court noted that probation was not appropriate because Christiano had previously failed to appear in court and because of the serious nature of the identify theft crime committed. In particular, the sentencing court noted that Christiano had engaged in a "carefully orchestrated and thought-out plan" to steal a social security number and birth certificate, open a fraudulent account using that information, and write checks on the newly created account. 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)).

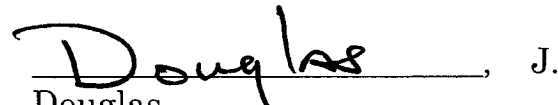
⁴See NRS 205.463(1) (providing for a prison sentence of 1 to 20 years).

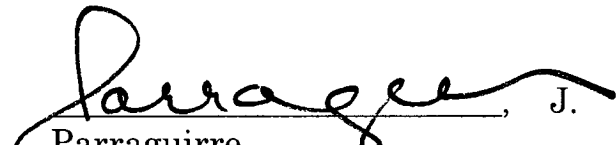
⁵See NRS 176A.100(1)(c).

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

ORDER the judgment of the conviction AFFIRMED.


Maupin


Douglas


Parraguirre

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