

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL CHRISTOPHER SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44966

**FILED**

OCT 05 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 burglary. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Randall Christopher Smith to serve a prison term of 22-96 months and ordered him to pay \$838.00 in restitution.

Smith's sole contention is that the district court abused its discretion at sentencing. Smith claims that the district court improperly based its sentencing determination on its "personal irritation . . . with [his] comments" and his continued protestations of innocence. Smith points out that the district court judge called him "a son of a bitch and a manipulator." We disagree with Smith's contention.<sup>1</sup>

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> The district court's discretion,

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<sup>1</sup>Smith also claims that the district court "punish[ed] him for exercising his right to remain silent" at sentencing. This claim is belied by the record – our review of the sentencing transcript reveals that Smith did not remain silent. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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

however, is not limitless.<sup>3</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>4</sup>

In the instant case, first, we note that Smith did not object during the sentencing hearing when the district court referred to him as “a manipulative son of a bitch.” Second, Smith cannot demonstrate that the district court relied on impalpable or highly suspect evidence in fashioning a sentence. Further, Smith does not allege that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute.<sup>5</sup> At the sentencing hearing, the State discussed Smith’s extensive criminal history and the fact that he committed the instant offense while on parole. The State asked the district court to impose a prison term of 38-96 months. Despite the district court’s “irritation” with Smith, the court did not follow the State’s recommendation and instead followed the recommendation of the Division of Parole and Probation and imposed a lesser prison term of 22-96 months. The district court, also, did not order Smith to pay a fine. Accordingly, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

<sup>4</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>5</sup>See NRS 205.060(2) (category B felony punishable by a prison term of 1-10 years and a fine not to exceed \$10,000.00).

Having considered Smith's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.  
Douglas

Rose, J.  
Rose

Parraguirre, J.  
Parraguirre

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