

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BENJAMIN COCA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45557

**FILED**

JAN 30 2006

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 sale of a controlled substance. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge. The district court sentenced Coca to a prison term of 19 to 48 months.

Coca first claims the district court relied on impalpable or highly suspect evidence at sentencing.<sup>1</sup> He specifically contends the court "apparently" based its sentencing decision upon a search warrant affidavit where a confidential informant claimed to have seen approximately 1/2 pound of methamphetamine in Coca's home, resulting in Coca's denial of a probationary sentence. Coca claims that the unproven allegation in the search warrant amounts to a "bald assertion, unsupported by any evidence whatsoever."<sup>2</sup>

Although the district court had discretion to grant probation in this case, there is nothing in the record to suggest that the district court abused its discretion in refusing to grant probation, particularly considering appellant's criminal history, consisting of at least two felonies

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<sup>1</sup>Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976).

<sup>2</sup>Goodson v. State, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982).

and 17 misdemeanors. Additionally, there is indication in the record that the district court relied on the information provided by a confidential informant as Coca alleges. The court mentioned a "large amount of methamphetamine sold." Coca was arrested following two controlled purchases of over 4 grams of methamphetamine each, totaling nearly 9 grams in roughly a 24 hour period, as well as the seizure of marijuana and a digital scale from his home. Coca, in fact, pleaded guilty to sale of a controlled substance. His argument that the court's characterization of him as a large drug dealer was "unsupported by any evidence whatsoever," is therefore without merit. Further, there is nothing in the record that shows the court relied upon the prosecution's statement that a preliminary investigation indicated Coca's brother could have been murdered over methamphetamine. The district court was merely responding to Coca's own statement it read relating to the murder and how it was a factor contributing to Coca's relapse.

Coca next contends that the sentence imposed constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is disproportionate to the crime.<sup>3</sup> A sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, or the sentence is not so unreasonably disproportionate as to shock the conscience.<sup>4</sup> This court has consistently afforded the district court wide discretion in its

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<sup>3</sup>Appellant relies primarily on Solem v. Helm, 463 U.S. 277 (1983).

<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)).

sentencing decision.<sup>5</sup> This court 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>

In this case, we note that the sentence imposed was within the parameters provided by the relevant statute.<sup>7</sup> Additionally, the sentence imposed cannot be said to shock the conscience or be based on highly suspect or impalpable evidence. The record reveals Coca was facing two counts of trafficking in a controlled substance. Coca received far less than the statutory maximum for the one count he pleaded to in exchange for one count to which he pleaded. He also benefited by dismissal of the other charge.

Therefore we,

ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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<sup>5</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>6</sup>Silks v. State, at 94, 545 P.2d at 1161.

<sup>7</sup>NRS 453.321.

cc: Hon. Steve L. Dobrescu, District Judge  
State Public Defender/Carson City  
State Public Defender/Ely  
Attorney General George Chanos/Carson City  
White Pine County District Attorney  
White Pine County Clerk