

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH RICHARD LANEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45743

FILED

FEB 23 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 burglary. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Kenneth Richard Laney to serve a prison term of 48 to 120 months.

Laney contends that the district court abused its discretion at sentencing by refusing to grant probation. Specifically, Laney argues that the sentence imposed is too harsh given that he needed long-term treatment for his drug addiction and mental health problems. Additionally, Laney argues that the district court abdicated its discretion by imposing the sentence recommended by the Division of Parole and Probation. Finally, Laney contends that he is entitled to a new sentencing hearing because a representative of the Division advocated for a particular sentence at the hearing, which was akin to allowing him to practice law without a license. Citing to the dissent in Tanksley v. State,¹ Laney asks this court to review the sentence to see that justice was done. We conclude that Laney's contentions lack merit.

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

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.”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, Laney does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statute is unconstitutional. Moreover, we note that the sentence imposed was within the parameters provided by the relevant statute⁴ and is not so unreasonably disproportionate to the crime as to shock the conscience. Finally, we note that the district court has discretion to consider a wide variety of information at sentencing, including argument from the Division of Parole and Probation, and the mere fact that the district court imposed the sentence recommended by the Division does not demonstrate that the court failed to exercise its

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).

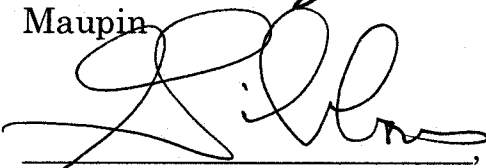
⁴See NRS 205.060(2) (providing for a prison term of 1 to 10 years); see also NRS 176A.100(1)(c) (the granting of probation is discretionary).

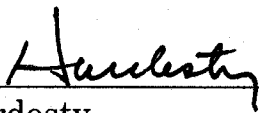
sentencing discretion.⁵ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

 J.
Maupin

 J.
Gibbons

 J.
Hardesty

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵See Martinez v. State, 114 Nev. 735, 961 P.2d 143 (1998) (recognizing that the district court may consider a wide variety of information to insure that that punishment fits the crime and the individual defendant).