

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD WAYNE SANTOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46255

FILED

FEB 23 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Ronald Wayne Santos to serve a prison term of 12-36 months.

Santos' sole contention on appeal is that the district court abused its discretion at sentencing by not granting him probation. Santos claims that conditional probation would be more appropriate than a term of incarceration because "the best protection society, and Mr. Santos, could get is a permanent positive resolution of [his] addiction, not the cost of warehousing someone for possessing methamphetamine." Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Santos argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Santos' contention is without merit.

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

²107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ The district court's discretion, however, is not limitless.⁵ 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."⁶ Despite 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.⁷

In the instant case, Santos does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

³Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁴Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

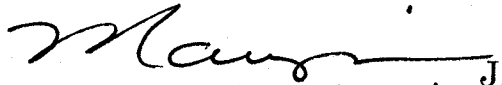
⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁷Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).


statutes.⁸ The State argued for, and the Division of Parole and Probation recommended, a term of incarceration based on Santos' criminal history and his failure to appear at an earlier sentencing hearing, after which a bench warrant issued for his arrest. The district court followed the Division's recommendation, informing Santos that his failure to appear "doesn't bode well for your cooperation on probation." And finally, we note that the granting of probation is discretionary.⁹ Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing by imposing a term of incarceration.

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

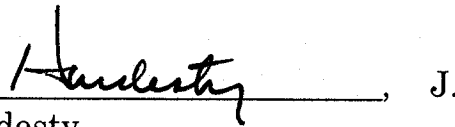
ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁸See NRS 453.336(2)(d); NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years and a fine of not more than \$5,000.00).

⁹See NRS 176A.100(1)(c).

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk