

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMIAH NOEL SWENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47667

FILED

NOV 13 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, entered pursuant to a guilty plea, of one count of attempted lewdness on a child under the age of 14. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Jeremiah Noel Swenson to serve a prison term of 24 to 96 months.

Swenson contends that the district court abused its discretion by sentencing him to prison. He suggests that the district court improperly gave greater weight to one of the two psychosexual evaluations that were prepared for sentencing. We note that the district court found that both evaluations indicated that Swenson presented a high risk to reoffend and that given "the rather high rating in both evaluations, [it] would be very reluctant to grant probation." We conclude that Swenson's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ 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."² A sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."³

Swenson does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Our review of the record reveals that the district court imposed sentences that fall within the parameters provided by the relevant statutes.⁴ And we note that a district court's grant of probation is discretionary.⁵

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

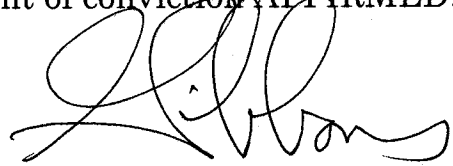
²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).


⁴See NRS 193.330(1)(a)(1) (an attempt to commit a category A felony is punished by imprisonment for a term of 2 to 20 years); NRS 201.230(2)
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Having considered Swenson's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

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

... continued

(a person who commits lewdness on a child under the age of 14 is guilty of a category A felony).

⁵See NRS 176A.100(1)(c).