

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANITA ANN CUNNINGHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47993

FILED

DEC 21 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Roberts*
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. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant Anita Ann Cunningham to serve a prison term of 12 to 36 months.

Cunningham contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions. Specifically, Cunningham contends that the sentence imposed is too harsh given the fact that she is a hard worker, was severely abused and sexually molested by her father, suffered from mental health and drug problems, and "none of her prior terms of probation have addressed the significant mental health issues brought on by her long term and severe childhood abuse." Cunningham claims that a term of probation conditioned on mental health treatment would allow her "to remain a productive member of society by working, while also putting a stop to the revolving door of mental trauma/drug abuse that has prevented her from succeeding in her goal toward a drug-free life." We conclude that Cunningham's contention lacks merit.

Regardless of its severity, 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."¹ This court has consistently afforded the district court wide discretion in its sentencing decision.² 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."³

In the instant case, Cunningham does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁴ Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. The record indicates that Cunningham has five felony convictions and has failed to complete several grants of probation. Accordingly, the sentence imposed does not constitute cruel and unusual punishment.

¹Blume 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)).


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

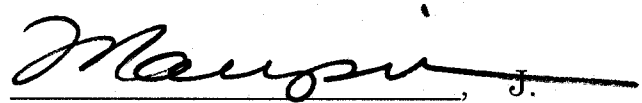
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

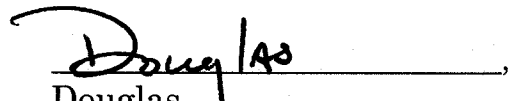
⁴See NRS 453.336(4)(d); NRS 193.130(2)(e); NRS 176A.100(1)(b) (punishable by a prison sentence of 1 to 4 Years).

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

ORDER the judgment of conviction AFFIRMED.


Gibbons, J.


Maupin, J.


Douglas, J.

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