

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE BARKLEY SKEES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

WAYNE BARKLEY SKEES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48835

FILED

MAY 29 2007

No. 48836

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from two separate judgments of conviction. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Pursuant to plea agreements in two different cases, the district court convicted appellant Wayne Barkley Skees of two counts of burglary. The district court sentenced Skees to serve two consecutive prison terms of 48 to 120 months, and it ordered Skees to pay \$249.98 in restitution. This consolidated appeal follows.

First, Skees contends that the district court abused its discretion by sentencing him to prison. He claims that the district court should have placed him on probation with conditions designed to help him overcome his addictions and address his mental health problems. He notes that he was qualified for and accepted into the Second Judicial District's Mental Health Court program.

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

Skees does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Our review of the record reveals that the district court imposed sentences that fall within the parameters provided by the relevant statute.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 205.060(2) (burglary is punishable by a prison term of 1 to 10 years).

⁵See NRS 176A.100(1)(c).

Second, Skees contends that the district court erred by allowing a Division of Parole and Probation representative to make a statement in support of the Division's recommendation. However, the sentencing court retains the discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant."⁶ Accordingly, we conclude that the district court did not abuse its discretion by allowing the Division representative to comment on the reasons for the Division's sentencing recommendation.

Third, Skees contends that the district court violated the Double Jeopardy Clause by basing its sentencing decision solely on his prior offenses.⁷ However, there is no indication in the record on appeal that the district court sought to punish Skees again for his prior offenses, and, as stated above, the district court imposed sentences that fall within the parameters provided by the relevant statute.⁸ Accordingly, we conclude that the district court's sentencing decision did not implicate the Double Jeopardy Clause.

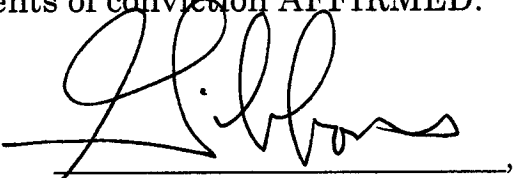
⁶Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); see also NRS 176.015(6).

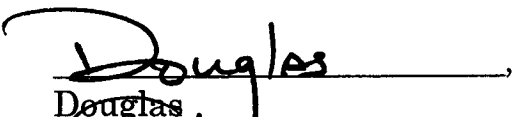
⁷Skees cites to Witte v. United States, 515 U.S. 389, 395-96 (1995); Ex Parte Lange, 85 U.S. (18 Wall.) 163, 173 (1874).

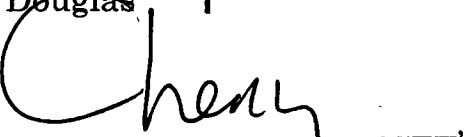
⁸See Witte, 515 U.S. at 403-04 (holding that "where the legislature has authorized . . . a particular punishment range for a given crime, the resulting sentence within that range constitutes punishment only for the offense of conviction for purposes of the double jeopardy inquiry").

Having considered Skees' contentions and concluded that they are without merit, we

ORDER the judgments of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk