

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIYA MATTHEW JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49369

FILED

OCT 22 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of possession of a controlled substance for the purpose of sale. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Kiya Matthew Johnson to serve a prison term of 12 to 36 months.

Johnson contends that the district court abused its discretion at sentencing "by failing to exercise it at all." Johnson argues that "[i]nstead of continuing [his] rehabilitation so that he could have a positive effect on society in the future, or at least explaining why he – and society – did not deserve this consideration, the [district court] merely warehoused [him] for a few years, where he could drain society's resources, and languish in a negative, non-detering, non-rehabilitative setting." Johnson requests a new sentencing hearing before a different judge.

We have consistently afforded the district court wide discretion in its sentencing decision.¹ 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."² 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

Johnson does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statutes,⁴ and that the granting

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).

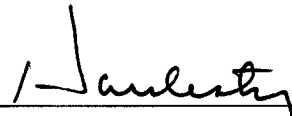
³Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

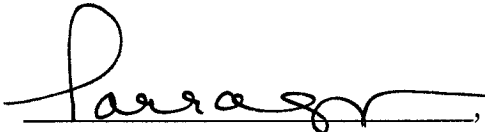
⁴See NRS 453.337(2)(a) (first offense possession of a controlled substance for the purpose of sale is a category D felony); NRS 193.130(2)(d) (a category D felony is punishable by a prison term of 1 to 4 years).


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

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

⁵See NRS 176A.100(1)(c).