IN THE SUPREME COURT OF THE STATE OF NEVADA

NEHEMIAH JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49692

FILED

NOV 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted grand larceny auto. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Nehemiah Johnson to serve a prison term of 12 to 36 months.

Johnson's sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh. Johnson contends that the district court should have granted Johnson probation and treated the crime as a gross misdemeanor considering Johnson's need for drug rehabilitation, his motivation to continue his education, his family background, and his age. Citing to the dissents in Tanksley v. State[1] and Sims v. State,[2] Johnson contends that this court should review the sentence imposed by the district court. We conclude that Johnson's contention is without merit.

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 422, 814 P.2d 63 (1991) (Rose, J., dissenting).

07-24972

This court has consistently afforded the district court wide discretion in its sentencing decision.[3] 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."[4] Moreover, 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.'"[5]

In the instant case, 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 was within the parameters provided by the relevant statutes,[6] and the granting of probation is discretionary.[7] Therefore, we conclude that the district court did not abuse its discretion at sentencing.

---

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

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

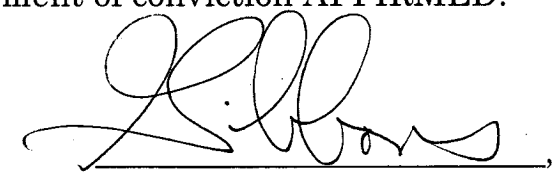
[5]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[6]See NRS 205.228(2) (providing that grand larceny is a category C felony); NRS 193.330 (1)(a)(4) (providing that attempt to commit a category C felony shall be punished as a category D felony by imprisonment for a term of 1 to 4 years, or as a gross misdemeanor by imprisonment for a term of not more than 1 year).

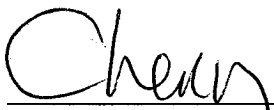
[7]See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Lee A. Gates, District Judge
Ciciliano & Associates, LLC
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk