

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIANA SUE DAVIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49842

**FILED**

DEC 14 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY G. W. Wasado  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of domestic violence battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Diana Sue Davis to serve a prison term of 12 to 32 months.

Davis contends that the district court erred in abdicating its sentencing discretion by simply following the Parole and Probation Division's sentencing recommendation. Further, Davis contends that the district court abused its discretion by refusing to grant her probation.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> 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."<sup>2</sup> Moreover, regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless

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

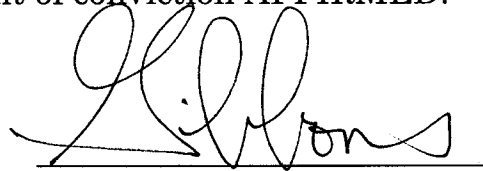
<sup>2</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."<sup>3</sup>

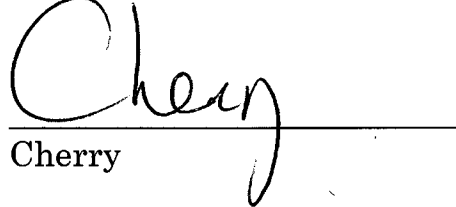
In the instant case, Davis does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>4</sup> Finally, we note that it is within the discretion of the district court to grant probation.<sup>5</sup>

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

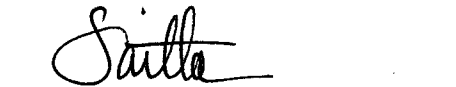
ORDER the judgment of conviction AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

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<sup>3</sup>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).

<sup>4</sup>See NRS 200.481(2)(b); NRS 193.130(2)(c).

<sup>5</sup>See NRS 176A.100(1)(c).

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