

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO CARO TORRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50040

**FILED**

DEC 14 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY A. Murado  
DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of burglary. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Alberto Caro Torres to serve a prison term of 28 to 72 months.

Torres contends that the district court abused its discretion by relying on prejudicial matters to determine the sentence and by imposing a sentence that is unreasonably disproportionate to his offense. Specifically, Torres claims that the district court relied upon the Division of Parole and Probation's representation that he was ineligible for a program of regimental discipline as described in NRS 176A.780, and that his 28- to 72-month prison sentence "is great enough to be unreasonably disproportionate to the offense as to shock the conscience." We disagree.

We have consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> We will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate

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

prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."<sup>2</sup> 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 as to shock the conscience.<sup>3</sup>

Torres pleaded guilty to burglary, admitting that he entered a vehicle to commit battery therein. The Division of Parole and Probation's presentence investigation report concluded that "[g]iven the defendant's youthful age, participation in the Regimental Discipline Program would be beneficial, however due to the violent nature of the offense, it is prohibited." During sentencing, the Division representative asserted, "I think that if we were to send Mr. Torres down to the Nevada Department of Corrections to be looked at for that Regimental Discipline Program they would view it in the same manner as [the State] just described. He was an active participant in the batteries on these two women." The district court also heard from Torres, his attorney, and the State before announcing its sentencing decision without comment.

Under these circumstances, Torres has failed to demonstrate that the district court relied upon impalpable or highly suspect evidence. Further, Torres has not alleged that the relevant statute is unconstitutional, and we note that the sentence imposed falls within the

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

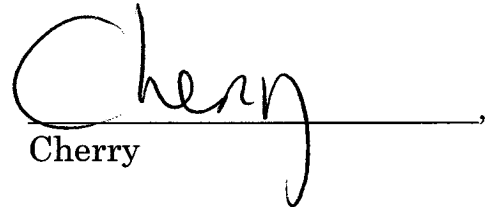
<sup>3</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

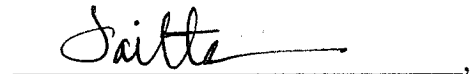
parameters provided by the statute.<sup>4</sup> Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

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

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<sup>4</sup>See NRS 205.060(2) (burglary is punishable by a prison term of 1 to 10 years).