IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDA JEAN RAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50063

FILED

JAN 22 2009

TRACIE K. LINDEMAN
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 burglary. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Brenda Jean Ray to a prison term of 12 to 32 months.

Ray's sole contention is that the district court abused its discretion at sentencing by imposing an excessive sentence. Specifically, Ray contends that the district court erred by sentencing her to prison when probation was sufficient. Citing to the dissents in Tanksley v. State, 113 Nev. 844, 850-53, 944 P.2d 240, 244-45 (1997) (Rose, J., dissenting), and Sims v. State, 107 Nev. 438, 441-46, 814 P.2d 63, 65-68 (1991) (Rose, J., dissenting), for support, Ray contends that this court should review the sentence imposed by the district court to determine whether justice was done. She further argues that the district court may not have considered the severity of her drug addiction and her lack of a significant criminal history. We conclude that Ray's contention is without merit.

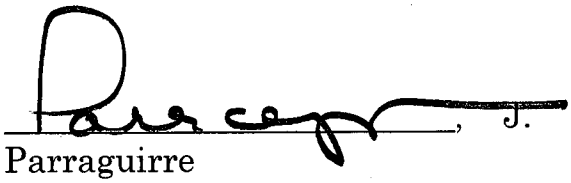
This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659,

664, 747 P.2d 1376, 1379 (1987). This court will refrain from interfering with the sentenced 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." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, regardless of its severity, "[a] sentence 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.'" 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).

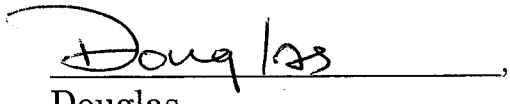
In the instant case, Ray does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes. NRS 205.060(2); NRS 193.330(1)(a)(3). Moreover, it is within the discretion of the district court to grant probation. See NRS 176A.100(1)(c). Finally, the sentence imposed by the district court was not so unreasonably disproportionate to the crime as to shock the conscience. The record indicates that Ray committed the instant offense within days of being sentenced to probation for another offense. Prior to imposing sentence, the district court considered Ray's arguments that she did not have a significant criminal history and was in need of drug treatment. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

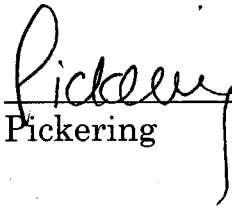
ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Jerome Polaha, District Judge
Jack A. Alian
Jenny Hubach
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk