

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERIMIAH DAVID WALTERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50221

**FILED**

JAN 18 2008

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted battery resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Jerimiah David Walters to serve a prison term of 12 to 30 months.

Walters' sole contention is that the district court abused its discretion by sentencing Walters to a prison term rather than granting probation. Walters claims the district court failed to consider that he would lose his employment and any contact with his children in North Carolina if he was sentenced to prison. Walters also claims that the district court failed to consider the fact that he had no prior criminal record, he was starting a business and buying a house, and could afford to pay the restitution amount in installment payments.

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 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, Walters 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> Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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<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).

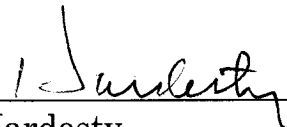
<sup>3</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).


<sup>4</sup>See NRS 200.481(2)(b); NRS 193.330(1)(a)(4); NRS 193.130(2)(d).

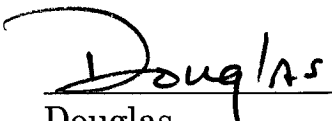
<sup>5</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. J. Michael Memeo, District Judge  
Elko County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Elko County District Attorney  
Elko County Clerk