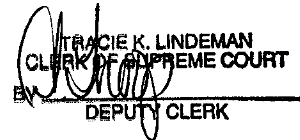
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. DAWSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50454



MAY 08 2008

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 burglary while in possession of a firearm. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Michael Dawson to a prison term of 24 to 60 months.

First, Dawson contends that the district court erred by denying his motion for a continuance to allow him to provide "substantial assistance" to the State.[1] The decision to deny a motion for continuance is within the sound discretion of the district court and will not be disturbed

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[1]Under the terms of the plea agreement, the State agreed not to oppose probation if Dawson cooperated with the police in providing information regarding stolen firearms.

absent a clear abuse of discretion.[2] When deciding whether an abuse of discretion occurred, this court considers the prejudice to the defendant.[3]

The record before us reveals that any prejudice that Dawson may have sustained from the district court's denial of his motion for a continuance was minimal. Although Dawson claims that he was not able to provide substantial assistance because the officers he was supposed to assist were on vacation or in training for two weeks, Dawson had ample opportunity to provide substantial assistance during the remaining three-month period from the signing of his guilty plea agreement until sentencing. Further, the district court stated that Dawson's substantial assistance would not have made an impact on its sentencing determination. We conclude that the district court's decision to deny Dawson's second motion for a continuance was neither unreasonable nor an abuse of discretion.

Dawson next contends that the district court abused its discretion at sentencing and the sentence was excessive. Specifically, Dawson contends that the district court erred in sentencing him to prison when the State did not oppose probation. Citing to the dissent in Tanksley v. State[4] and Sims v. State[5] for support, Dawson contends that this court should review the sentence imposed by the district court to

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[2]Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996).

[3]See Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 556-57 (1991).

[4]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[5]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

determine whether justice was done. We conclude that Dawson's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[6] 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."[7] 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.'"[8]

In the instant case, Dawson 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 statute.[9] Finally, we note that it is within the discretion of the district court to grant

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

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

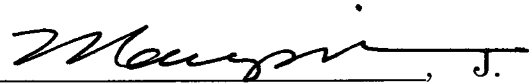
[8]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[9]See NRS 205.060(4).

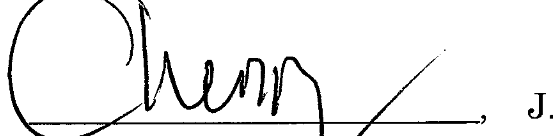
probation.[10] Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Dawson's contentions and concluded they are without merit, we

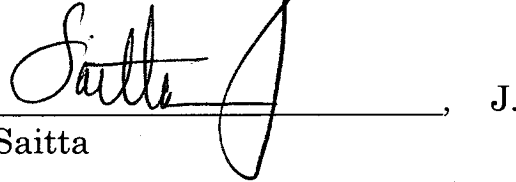
ORDER the judgment of conviction AFFIRMED.



_______________________, J.
Maupin



_______________________, 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

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