

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE JUAN RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50550

FILED

APR 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of attempted sexual assault. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Jose Juan Rodriguez to serve a prison term of 24 to 96 months.

Rodriguez contends that the district court abused its discretion by sentencing him to prison instead of "releasing him on probation with a condition that he enter into and complete a long-term residential substance abuse treatment program as a prerequisite to placement in an out-patient sex-offender program."

We have consistently afforded the district court wide discretion in its sentencing decision.¹ We 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

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

evidence."² 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.³

Rodriguez has not demonstrated that the district court relied on impalpable or highly suspect evidence. To the extent that Rodriguez contends that the presentence investigation report (PSI) mischaracterized his psychosexual evaluation, we note that the psychosexual evaluation was attached to the PSI for the district court's consideration, Rodriguez did not object to or offer any corrections to the PSI, defense counsel discussed the psychosexual evaluation during sentencing, and the record does not indicate that the district court relied solely on the PSI to reach its sentencing decision. We further note that the sentence imposed falls within the parameters provided by the relevant statutes⁴ and that the granting of probation is discretionary.⁵ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

³Blume 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)).

⁴See NRS 193.330(1)(a)(1) (an attempt to commit a category A felony is punishable by a prison term of 2 to 20 years); NRS 200.366(2) (sexual assault is a category A felony).

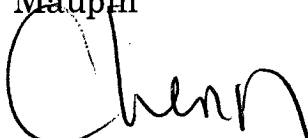
⁵See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.


_____ J.

Maupin


_____ J.

Cherry


_____ J.

Saitta

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk