

IN THE SUPREME COURT OF THE STATE OF NEVADA

PABLO SANTOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50582

**FILED**

DEC 11 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, pursuant to a jury verdict, of assault with a deadly weapon. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Pablo Santos to serve a prison term of 13-60 months.

Santos contends that the district court abused its discretion at sentencing. Specifically, Santos claims that the district court (1) based its decision to deny him probation and subsequent entry into an Alcoholics Anonymous (AA) treatment program on the "erroneous" impression that it could not do so without violating the First Amendment,<sup>1</sup> and (2) relied at sentencing upon highly suspect or impalpable evidence, namely, his status

---

<sup>1</sup>See Inouye v. Kemna, 504 F.3d 705, 714 n.9 (9th Cir. 2007) (noting that Alcoholics Anonymous "has such substantial religious components that governmentally compelled participation in it violated the Establishment Clause") (emphasis added); see also U.S. Const. amend. I.

as a legal resident alien, and as a result, punished him more harshly.<sup>2</sup> We disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</sup> The district court's discretion, however, is not limitless.<sup>4</sup> Nevertheless, 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 evidence."<sup>5</sup> Despite its severity, 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 to the crime as to shock the conscience.<sup>6</sup>

In the instant case, Santos failed to demonstrate that the district court relied solely on impalpable or highly suspect evidence or allege that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided

---

<sup>2</sup>See Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (holding that a district court violates due process concerns when it bases a sentencing determination on a defendant's ethnicity or nationality); see also Ruvalcaba v. State, 122 Nev. 962, 963-65, 143 P.3d 468, 470-71 (2006).

<sup>3</sup>Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

<sup>4</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (emphasis added).

<sup>6</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

by the relevant statute.<sup>7</sup> At the sentencing hearing, Santos argued for probation, noting his addiction to alcohol and need for a treatment program. The State, however, asked the district court to impose the maximum allowable sentence due to Santos' violent criminal history and inability to successfully complete a previous probationary term. In allocution, Santos merely stated that he would appeal his conviction because he was "not guilty of this." Prior to imposing the sentence, the district court noted that the instant offense was not "high" on the "scale of egregiousness," but continued –

However, in looking at your criminal history, there is a pattern. There is an obvious pattern.

And, based on the criminal history as well as the jury verdict, I think that the recommendation that was provided by the Division [of Parole and Probation] is an appropriate recommendation. So I will follow it.

There is no indication from the record that the district court based its sentencing determination on Santos' status as a legal resident alien or denied him probation based on a mistaken assumption about its ability to order him into an AA treatment program. And finally, we note that the granting of probation is discretionary.<sup>8</sup> Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

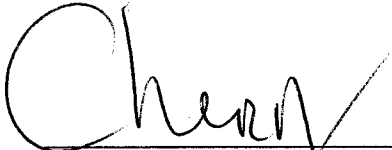
---

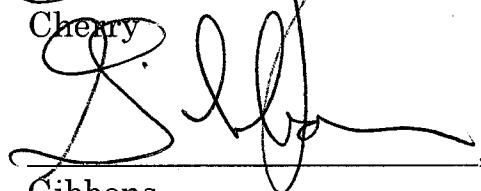
<sup>7</sup>See NRS 200.471(2)(b) (category B felony punishable by a prison term of 1-6 years).

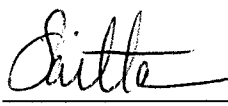
<sup>8</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.<sup>9</sup>

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

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

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

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

---

<sup>9</sup>Because Santos is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents Santos has submitted to this court in this matter.