

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE CABALLERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50604

FILED

OCT 17 2008

TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of trafficking in a controlled substance. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Jose Caballero to serve a prison term of 48 to 120 months and ordered him to pay a \$9,000 fine.

Caballero contends that the district court abused its discretion at sentencing. Caballero claims that the district court improperly engaged in a "risk/benefit analysis" and imposed "a full risk penalty," the district court abdicated its sentencing authority by deferring to the Division of Parole and Probation's sentencing recommendation, and the Division's recommendation "seems unduly harsh when compared to that proposed by defense counsel." Caballero requests a new sentencing hearing.

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, 664, 747 P.2d 1376, 1379 (1987).

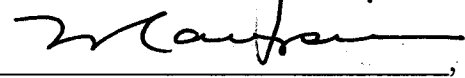
evidence.”² A sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.³


Caballero 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 is within the parameters provided by the relevant statutes.⁴ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Caballero’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

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).

⁴See NRS 453.3385(2) (trafficking in a controlled substance weighing more than 14 grams and less than 28 grams is punishable by a prison term of 2 to 15 years and a fine of not more than \$100,000).

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