IN THE SUPREME COURT OF THE STATE OF NEVADA

DUANE DALE CATER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53783

FILED

NOV 04 2009

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 grand larceny. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Duane Dale Cater to serve a prison term of 24 to 60 months and ordered him to pay $1,671.56 in restitution.[1]

Cater contends that the district court abused its discretion at sentencing by "relying upon mere supposition . . . that there were mental health and drug treatment programs available in the prison and that it would be more practical for [him] to attend those programs than mental

[1]We note that the judgment of conviction contains a clerical error; it omits reference to the statutes under which Cater was sentenced. See NRS 176.105(1)(c), NRS 193.130(2)(c); NRS 205.222(2). Following this court's issuance of its remittitur, the district court shall enter a corrected judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).

health court and the treatment programs in the community." He requests a new sentencing hearing before a different judge.

We have consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). 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. Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

Here, Cater asked to be placed on probation under the supervision of the mental health court so that he could participate in substance abuse treatment programs. The State informed the district court that the Division of Parole and Probation "stated that with his long criminal history, to include 14 convictions, and with his statements that he routinely does this -- that he committed this same crime many times -- that they do not believe that [Cater] is viable for probation." And the district court announced:

> Well, I'm not unsympathetic to your interest in and to your request for that kind of help. It's just not very practical for me to provide it, with the record that I have in front of me.
>
> And I do know that there are programs available in prison. I do know that. And that you can take advantage of those if you are determined enough to do that.

Under these circumstances, Cater has not demonstrated that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. We note that the sentence imposed falls within the parameters provided by the relevant statutes, see NRS 193.130(2)(c); NRS 205.222(2), and that the granting of probation is discretionary, see NRS 176A.100(1)(c). We conclude that the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.

Douglas, J.

Pickering, J.

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