

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONNELL COSEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53953

**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 possession of a controlled substance. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Donnell Cosey to serve a prison term of 15 to 48 months.

Cosey contends that the district court abused its discretion at sentencing by abdicating its responsibility to adjudge a proper sentence based on the circumstances and, instead, imposing the sentence recommended by the State based on its belief that Cosey's criminal history gave it no choice.

During sentencing, Cosey told the district court that he was receiving treatment for physical and mental health problems, he had been accepted to the mental health court, and he wanted to be placed on probation under the mental health court's supervision. The State informed the district court that Cosey had admitted to three prior felony convictions, had more than a casual relationship with law enforcement



and the criminal justice system, and had delayed resolution of this offense by failing to appear for his arraignments. Thereafter, the district court addressed Cosey and announced:

Well, I'm going to take all of what you said into consideration, and I think that that has also been taken into consideration by the State.

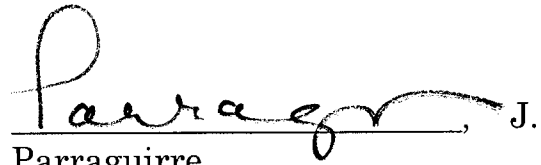
I'm going to follow the recommendation, and I'm going to sentence you to a term of 15 to 48 months in the Nevada State Prison. Credit for 24 days' time served. In view of your record, I don't see that I have a choice.

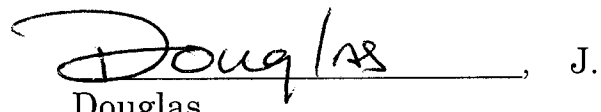
It is evident from these circumstances that the district court considered both parties' arguments before deciding to follow the State's sentencing recommendation. The district court's statement that "In view of your record, I don't see that I have a choice" appears to have been made for rhetorical effect; it was not a legal conclusion, drawn from Cosey's criminal history, that the district court was required to impose a specific sentence.

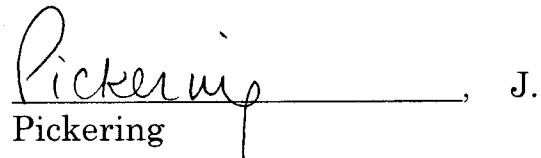
We note that Cosey has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). We observe that Cosey's sentence falls within the parameters provided by the relevant statutes, see NRS 193.130(2)(d); NRS 453.336(2)(b), 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, see Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), 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