

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN D. SMITH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35028

FILED

JUL 10 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of second degree kidnapping. The district court sentenced appellant to serve 24 to 120 months in the Nevada State Prison.

Appellant's sole contention is that the district court abused its discretion in sentencing him. Appellant argues that the district court should have sentenced him to probation rather than a prison term. We disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). This court 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). Moreover, "a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional." Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995) (citing Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978)).

In the instant case, appellant, in an apparent attempt to get the victim to attend a drug rehabilitation program, pulled the victim through the window of a vehicle and threatened to kill her. The victim escaped only by jumping from the moving vehicle. Appellant contends that the district court should have given him probation because while awaiting sentencing, appellant eventually did convince the victim to check into a rehabilitation facility. We disagree.

Appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statutes. See NRS 200.310(2); NRS 200.330. Moreover, the granting of probation is discretionary. See NRS 176A.100(1)(c).

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

ORDER this appeal dismissed.

Young, J.
Young

Agosti, J.
Agosti

Leavitt, J.
Leavitt

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk