IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL JAY MAXFIELD, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55997

FILED

SEP 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of child abuse. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Daniel Jay Maxfield raises two issues related to sentencing. He argues that (1) the sentence is excessive in violation of the United States and Nevada Constitutions and (2) the district court abused its discretion by refusing to grant probation based on the following considerations: he has been seeking assistance with his substance abuse issues; his criminal history involves little violence and is primarily related to his substance abuse issues; he has a supportive family, a place to live, and a job; and the current offense was not planned or perpetrated with anyone else. These contentions are without merit.

"The district court is vested with wide discretion regarding sentencing and probation," Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978), and we therefore will not interfere with the district court's sentencing determinations so long as the sentence imposed is within statutory limits and "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 that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); accord Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

The sentence imposed (28-72 months) is within the statutory limits. NRS 200.508(1)(b)(1). Maxfield does not argue that the sentence was based on impalpable or highly suspect evidence or that the statute fixing punishment is unconstitutional. And the record demonstrates that the district court carefully considered the facts and circumstances of the offense and Maxfield's character and criminal history in determining the appropriate sentence and whether to grant probation. We discern no abuse of the district court's wide discretion and are not convinced that the sentence is so grossly disproportionate to the offense as to shock the conscience. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. James E. Wilson, District Judge
Carson City Clerk
Attorney General/Carson City
Carson City District Attorney
State Public Defender/Carson City