

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN HOBBS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57781

FILED

JUL 15 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted burglary. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Stephen Hobbs contends that the district court abused its discretion at sentencing because probation with inpatient treatment would have been a more appropriate sentence; it followed the recommendation of the Division of Parole and Probation without exercising any independent discretion; and, by sentencing him to the maximum possible sentence, the court usurped the role of the parole board, which is in the best position to determine whether he could be rehabilitated. We disagree.


At sentencing, the district court listened to the arguments of defense counsel and counsel for the State, as well as Hobbs's statement in allocution. The court also considered Hobbs's criminal history, specifically, the number of times he had previously been terminated from probation or parole. Hobbs's sentence of 24 to 60 months in prison is within the statutory limits, see NRS 193.130(2)(c); NRS 193.330(1)(a)(3); NRS 205.060(2), and Hobbs does not allege that the district court relied on "impalpable or highly suspect evidence," Silks v. State, 92 Nev. 91, 94,

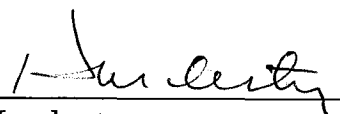
545 P.2d 1159, 1161 (1976). And, it is within the district court's discretion whether to grant a defendant probation. NRS 176A.100(1)(c). We conclude that the district court did not abuse its discretion at sentencing. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

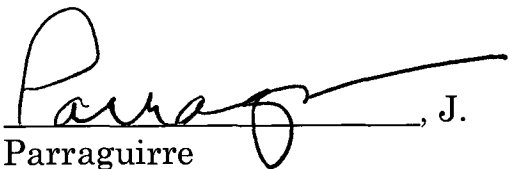
Hobbs also contends that, because the notice of appeal was filed in proper person, the sentence imposed is within the legal limits, and no legal issues were preserved for appeal in the guilty plea agreement, this court should construe the notice of appeal as a request to seek a post-sentence withdrawal of his guilty plea and remand this matter to the district court for consideration. If Hobbs is dissatisfied with his guilty plea, his remedy, if any, is to file a motion to withdraw the plea or a post-conviction petition for a writ of habeas corpus pursuant to NRS Chapter 34 in the district court. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), limited by Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994).

Having considered Hobbs's contentions and concluded they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk