

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE GERALD ANDREOZZI,
JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58460

FILED

DEC 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Appellant Clarence Gerald Andreozzi, Jr., contends that the district court abused its discretion at sentencing by imposing a prison term rather than diversion or probation because he was a suitable candidate, the State recommended probation, and he did not contest the charges or deny responsibility. We disagree.

Andreozzi's sentence of 14 to 36 months in prison is within the statutory limits, see NRS 453.336(2)(a); NRS 193.130(2)(e), and he 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). Further, because Andreozzi had three prior felony convictions, it was within the district court's discretion not to suspend his sentence and grant diversion or probation. See NRS 176A.100(1)(b)(4); NRS 453.336(1). We conclude that the district court did not abuse its discretion, see Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk