

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES STEWART NELSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58489

**FILED**

**NOV 18 2011**

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

ORDER OF AFFIRMANCE

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

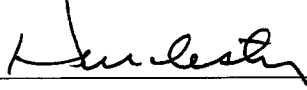
Appellant James Stewart Nelson contends that the district court abused its discretion by sentencing him to a term of imprisonment instead of probation because he was a suitable candidate for probation, had a clean record for the ten years preceding his arrest for the instant charge, and did not contest the charge or deny responsibility. We disagree.

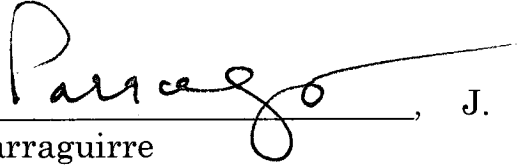
Nelson's sentence of 15 to 38 months in prison is within the statutory limits, see NRS 453.411(3)(a); NRS 193.130(2)(e), and he does not allege that the district court relied on "impalpable or highly suspect evidence," Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Further, because Nelson had previously had his probation revoked for a felony conviction and had two prior felony convictions, it was within the district court's discretion not to suspend his sentence and grant probation. See NRS 176A.100(1)(b)(2) and (1)(b)(4). 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.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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