

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA DAVID MCCABE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62593

FILED

SEP 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


ORDER OF AFFIRMANCE

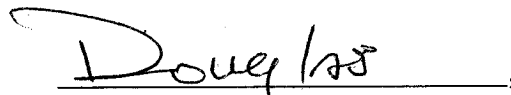
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony DUI. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.


Appellant Joshua David McCabe contends that the district court abused its discretion by imposing an excessive and disproportionate sentence amounting to cruel and unusual punishment. We disagree. This court will not disturb a district court's sentencing determination absent an abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). McCabe has not alleged that the district court relied solely on impalpable or highly suspect evidence or demonstrated that the sentencing statute is unconstitutional. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009); *see also Dixon v. State*, 103 Nev. 272, 274 & n.2, 737 P.2d 1162, 1164 & n.2 (1987) (no ex post facto violation where, "[o]n the day [appellant] elected to commit the offense here under consideration, reference to the statute would have indicated precisely the penalty he risked"). McCabe's prison term of 24-60 months falls within the parameters provided by the relevant statute, *see former NRS 484.3792(2)(a)* (currently codified as *NRS 484C.410(1)(a)*), and the

sentence imposed is not so unreasonably disproportionate to the gravity of the offense as to shock the conscience, *see Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion). We conclude that the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Calvert & Hubach, LLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk