

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALAN HARVEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62683

FILED

SEP 18 2013

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

ORDER OF AFFIRMANCE

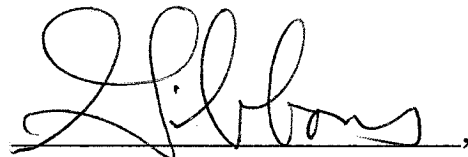
This is an appeal from a corrected judgment of conviction, pursuant to a jury verdict, of battery upon an officer. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

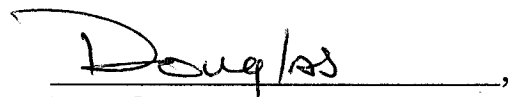
Appellant Michael Alan Harvey contends that the district court abused its discretion at sentencing because a term of probation with mental health treatment as a condition would have been a more appropriate sentence. We disagree. Harvey's sentence of 12 months in jail is within the statutory limits, *see* NRS 193.140; NRS 200.481(2)(d), 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). It is within the district court's discretion to grant probation, NRS 176A.100(1)(c), and Harvey fails to demonstrate that the district court abused its discretion by declining to do so here, *see Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

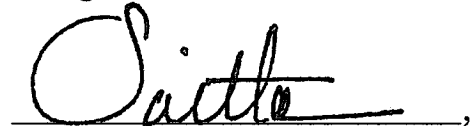
Harvey also alleges that the district court "abused her discretion by requiring [him] to appeal his conviction before he would be a suitable candidate for alternative sentencing." This claim is not supported by the record. After pronouncing sentence, the district court noted that if Harvey behaved well in jail he "might be a candidate for house arrest" and

explained the timeframe for filing the notice of appeal. Harvey indicated his understanding. The district court then stated, "Okay. Then you may be a candidate for alternative sentencing but . . . I would strongly urge you to get mental health treatment." Contrary to Harvey's assertion, the district court did not require him to file an appeal before becoming eligible for alternative sentencing. A fair reading of the record indicates that the district court was merely referring to the house arrest program she mentioned earlier. Further, we note that Harvey did not seek an alternative sentence such as mental health court. We therefore conclude that Harvey fails to demonstrate an abuse of discretion. Accordingly, we

ORDER the corrected judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Janet J. Berry, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk