

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY TODD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35786

**FILED**

JUL 28 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of carrying a concealed weapon. The district court sentenced appellant to 12-34 months in prison.

Appellant's sole contention is that the district court abused its discretion at sentencing by refusing to grant probation, and that the district court abdicated its sentencing discretion by imposing the sentence recommended by the Division of Parole and Probation. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, "a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional." Griego v. State, 111 Nev. 444, 447, 893 P.2d

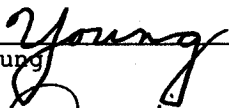
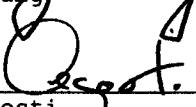
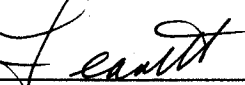
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995, 997-98 (1995) (citing Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978)).

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statutes. See NRS 202.350(3)(b); NRS 193.130(2)(d). Moreover, the granting of probation is discretionary. See NRS 176A.100(1)(c). Finally, we conclude that the fact that the court imposed the sentence recommended by the Division of Parole and Probation does not establish that the district court failed to exercise its discretion in sentencing appellant.

Having considered appellant's contention and concluded that it is without merit, we

ORDER this appeal dismissed.

 _____ Young	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Jerome M. Polaha, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk