IN THE SUPREME COURT OF THE STATE OF NEVADA

CHADD WHALEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35849

FILED

JUL 26 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

CHADD WHALEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35863

ORDER DISMISSING APPEALS

These are consolidated appeals. Docket No. 35849 is an appeal from an order of the district court revoking appellant's probation. Docket No. 35863 is an appeal from a judgment of conviction.

Appellant was originally convicted of concealing evidence of a felony, a gross misdemeanor. On July 6, 1998, the district court sentenced appellant to one year in jail, suspended the sentence, and placed appellant on probation for a period not to exceed three years. At a probation violation hearing held on March 6, 2000, appellant admitted to being in possession of marijuana and being under the influence of marijuana. The district court revoked appellant's probation and ordered him to serve the original sentence of one year in jail, with credit for forty-four days time served.

Appellant contends that the district court abused its discretion by revoking his probation. "In considering the

standard to be applied in revoking probation the law is well-established that revocation of probation is within the exercise of the trial court's broad discretionary power and such an action will not be disturbed in the absence of a clear showing of abuse of that discretion." Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). To justify revocation, "[t]he evidence and facts must reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation." Id. We conclude that the district court did not abuse its discretion by revoking appellant's probation.

In Docket No. 35863, appellant pleaded guilty to one count of unlawful use of a controlled substance. The district court sentenced appellant to 12-48 months in prison. The district court suspended the sentence and placed appellant on probation for a term not to exceed three years.

Appellant's sole contention is that the district court abused its discretion at sentencing because the district court did not order diversion under NRS 453.3363. 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

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 was within the parameters provided by the relevant statutes. See NRS 453.411(3)(a); NRS 193.130(2)(e). Moreover, placement in the diversion program is discretionary. NRS 453.3363(1) ("the court . . . may suspend further proceedings") (emphasis added).

Having considered appellant's contentions and concluded that they are without merit, we

ORDER these appeals dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Merlyn H. Hoyt, District Judge
Attorney General
White Pine County District Attorney
State Public Defender
White Pine County Clerk