

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARONDA WINZER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66207

**FILED**

**JAN 21 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of credit or debit card without cardholder's consent. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant contends that her sentence of 12-34 months, for a non-violent offense, constitutes cruel and unusual punishment. She asserts that she should have been afforded the benefit of probation as was contemplated in her plea negotiations.

The granting of probation is discretionary. See NRS 176A.100(1)(c). See generally *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . . ."). 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). Further, regardless of its severity, a sentence that is within the statutory limits is not "cruel and


unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *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) (explaining that the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).


Although the State agreed to recommend probation as part of the plea negotiations, the court found that, upon appellant’s failure to appear at the initial sentencing hearing, the State regained the right to argue at sentencing for any appropriate sentence. After noting that appellant had a significant criminal history, she had traffic warrants out against her, she was on probation at the time she committed the instant offense, and she failed to appear at sentencing and picked up a new charge while sentencing was pending, the district court rejected appellant’s request for probation and imposed a prison term of 12-34 months.

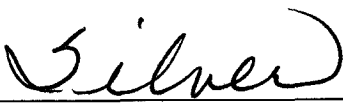
The sentence imposed is within the parameters provided by the relevant statutes, see NRS 193.130(2)(d), NRS 205.690(2), and appellant does not allege that those statutes are unconstitutional or that the district court relied on impalpable or highly suspect evidence. The district court did not abuse its discretion in declining to suspend the sentence and place appellant on probation. The sentence imposed is not so

grossly disproportionate to the crime as to constitute cruel and unusual punishment. Accordingly, we conclude appellant's claim lacks merit, and we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Elissa F. Cadish, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk