IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES E. BROWN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36088

FILED

AUG 18 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of uttering a forged instrument. The district court sentenced appellant to serve 19 to 48 months in prison and ordered appellant to pay $867.75 in restitution.

Appellant's sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh. Citing the dissent in Tanksley v. State, 113 Nev. 844, 944 P.2d 240 (1997), appellant argues that this court should review the sentence imposed to determine whether justice was done. Appellant also argues 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 contentions are 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).

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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 205.110; NRS 205.090; 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 demonstrate that the court failed to exercise its sentencing discretion.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.

Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk