IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS GUILLERMO RODRIGUEZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36105

FILED

JUL 26 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 causing substantial bodily harm to another by driving while having 0.10 percent or more by weight of alcohol in the blood. The district court sentenced appellant to serve 60 to 150 months in prison and pay a $5,000.00 fine.[1]

Appellant's sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh. Appellant relies primarily on the dissent in Tanksley v. State, 113 Nev. 844, 944 P.2d 240 (1997), to support the proposition that this court should review his sentence to see that justice was done. In particular, appellant complains that the sentence imposed exceeds that recommended by the defense, the State, and the Division of

[1]The court also ordered appellant to pay restitution in the amount of $198,096.36, a $25.00 administrative fee, a $60.00 chemical analysis fee, and a $500.00 attorney fee.

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Parole and Probation.[2] 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 statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute. See NRS 484.3795(1) (providing for sentence of 2 to 20 years). Finally, the fact that the sentence imposed exceeded the

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[2]The defense and the State concurred in the recommendation made by the Division of Parole and Probation. The parties have not provided this court with documentation regarding the Division's recommendation. However, based on the sentencing transcripts, it appears that the Division recommended a maximum sentence of 12 years. It is not clear what minimum sentence the Division recommended.

sentence recommended by the Division of Parole and Probation is of no consequence. Renard v. State, 94 Nev. 368, 370, 580 P.2d 470, 471 (1978); see also Etcheverry v. State, 107 Nev. 782, 786, 821 P.2d 350, 352 (1991) (stating that recommendation of Department of Prisons or Department of Parole and Probation has no binding effect on courts).

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

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

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