

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY JAMES GIOMBETTI, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67325

FILED

JUN 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

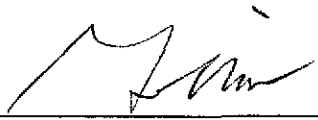
Appellant Anthony James Giombetti, Jr., claims the district court either abused its discretion or failed to exercise any discretion when it imposed the Division of Parole and Probation's sentencing recommendation instead of placing him on probation with mental health court as a condition of probation.

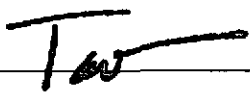
We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Giombetti's 12- to 32-month prison term falls within the parameters of the relevant statutes. See NRS 193.130(2)(c); NRS 200.481(2)(b). The record does not suggest the district court's sentencing decision was based on palpable or highly suspect evidence. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And the district court's decision to grant probation is discretionary. See NRS 176A.100(1)(c).

The record does not support Giombetti's assertion that the district court's sentencing decision was merely a "reflexive imposition" of

the Division's recommendation. Instead, it demonstrates Giombetti previously participated in mental health and drug courts, he was being sentenced for offenses committed in two separate cases, and the offense committed in this case was one of violence. Given this record, we are not convinced the district court abused its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk