IN THE SUPREME COURT OF THE STATE OF NEVADA

JACKIE LEE KESTERSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36207

FILED

NOV 06 2000

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve 10 to 25 years in prison.

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 asks this court to review the sentence to determine whether justice was done. 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 453.3385(3).

Appellant also appears to argue that the district court abused its discretion in refusing to reduce or suspend the sentence based on appellant's efforts to render substantial assistance in accordance with NRS 453.3405(2). We disagree.

NRS 453.3405(2) gives the district court authority to reduce or suspend the sentence of a person convicted of certain controlled substance offenses if the court "finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals or of any other person involved in trafficking in a controlled substance." The decision to grant a sentence reduction under NRS 453.3405(2) is discretionary. See Matos v. State, 110 Nev. 834, 838, 878 P.2d 288, 290 (1994).

Based on our review of the record on appeal, we conclude that the district court did not abuse its discretion. There is nothing in the record to support the suggestion, made by appellant, that the district court believed it could only find substantial assistance if the arresting agency recommends it. Moreover, we note that although appellant gave the police several names and telephone numbers of alleged drug dealers, the police already were aware of much of the information and the rest of the information did not come to anything useful or

could not be corroborated. Additionally, although the police prepared to buy drugs from one individual who appellant named as a drug dealer, the deal never took place and subsequent investigation of the individual failed to reveal any evidence that the individual was a drug dealer. The information provided by appellant does not rise to the level of "substantial assistance." See State v. Howington, 509 A.2d 600, 602 (Del. Super. Ct. 1986) (defining "substantial assistance" in similar statute as "assistance which is worthwhile, having considerable value, important or essential; rather than that which is inconsequential, lacking in value or nominal"), aff'd, 520 A.2d 1044 (Del. 1987); see also State v. Drewry, 519 So.2d 591, 597-98 (Ala. Crim. App. 1987) (quoting Howington with approval). We therefore conclude that the district court did not abuse its discretion in refusing to reduce or suspend the sentence pursuant to NRS 453.3405(2).

Having considered appellant's contentions and concluded that they are without merit, we affirm the judgment of conviction.

It is so ORDERED.

R Young, J.
Young

Maupin, J.
Maupin

Becker, J.
Becker

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