

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN DEAN FRANCIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67890

FILED

OCT 19 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, pursuant to a jury verdict, of attempted grand larceny. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

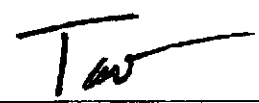
Appellant Dustin Dean Francis argues the district court abused its discretion in choosing to sentence him to a category D felony and a prison term rather than to a gross misdemeanor and probation. Francis asserts he should have received a lesser sentence because he accepted responsibility for the crime and pledged to atone for his actions. Francis' argument is without merit.

We review a district court's sentencing decision for abuse of discretion. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). A review of the record reveals the district court noted Francis' criminal history, the available sentencing options, and then imposed a sentence of 12 to 32 months for Francis' conviction of attempted grand

larceny as a category D felony.¹ See NRS 193.330(4); NRS 205.222(2). Under these circumstances, we conclude the district court properly exercised its discretion when imposing Francis' sentence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk

¹The State asserts on appeal the district court should have sentenced Francis to a category C felony due to the value of the item Francis attempted to steal. We note the State did not object or otherwise attempt to correct the district court when it announced its decision to sentence Francis for a category D felony. Further, the record before this court does not provide any information regarding the jury's verdict in this regard. "This court on appeal must confine its review to the facts shown in the record." *Lee v. Sheriff of Clark Cnty.*, 85 Nev. 379, 380, 455 P.2d 623, 624 (1969). Accordingly, we decline the State's request to order a new sentencing hearing in this matter.