

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHANE STEVEN MOBLEY-LANCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70561

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of being under the influence of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.


Appellant Shane Steven Mobley-Lance claims the district court abused its discretion by sentencing him to a prison term of 12 to 34 months rather than suspending the proceedings and granting his application for a diversion program pursuant to NRS 453.3363.¹ He asserts a diversion program was appropriate because he took the first step toward rehabilitation by admitting he was at fault.


¹The State asserts this appeal should be dismissed because the issue raised violates the provisions of NRS 177.015(4). We disagree. NRS 177.015(4) permits a defendant to appeal from a final judgment resulting from a guilty plea if “the appeal is based upon reasonable constitutional, jurisdictional or *other grounds* that challenge the legality of the proceedings.” (Emphasis added). See also, *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (identifying “a challenge to the sentence imposed on constitutional or other grounds” as a claim that may be raised on direct appeal from a final judgment resulting from a guilty plea) *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

Mobley-Lance's sentence is within the statutory limits, see NRS 193.130(2)(e); NRS 453.411(3)(a), and he does not allege that the district court relied on "impalpable or highly suspect evidence," *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Further, because Mobley-Lance had two prior felony convictions, it was within the district court's discretion not to suspend his sentence and grant diversion or probation. See NRS 176A.100(1)(b)(4); NRS 453.3363(1). At sentencing, Mobley-Lance acknowledged he was given a presentence opportunity to participate in Drug Court and because he did not "make the requirements," he was "thrown back in jail." The district court stated Mobley-Lance had been given the opportunity of Drug Court at least twice and both times he absconded from the program. The district court then rejected Mobley-Lance's request for a drug diversion program. We conclude the district court did not abuse its discretion. See *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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