IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY BRIAN KEELER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36469

FILED

OCT 30 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 attempted sexual assault. The district court sentenced appellant to serve 50 to 180 months in prison and a special sentence of lifetime supervision upon appellant's release from prison.

Appellant's sole contention is that the district court abused its discretion by refusing to grant probation. Appellant argues that probation was warranted because his criminal activity is the product of his dependency on alcohol and controlled substances and that he would be able to perform successfully on probation because he had been clean and sober for a year. 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 is within the parameters provided by the relevant statutes. See NRS 200.366(2) (sexual assault is category A felony); NRS 193.330(1)(a)(1) (sentence for attempt to commit a category A felony is imprisonment for 2-20 years). Moreover, the granting of probation is discretionary. See NRS 176A.100(1)(c).

Having considered appellant's contention and concluded that it is without merit, we affirm the judgment of conviction.

It is so ORDERED.

C. Young, J.
Young

Maupin, J.
Maupin

Becker, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
State Public Defender
Carson City Clerk