

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL LOUIS SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72312

**FILED**

AUG 17 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Daniel Louis Smith appeals from a judgment of conviction entered pursuant to a guilty plea of discharging a firearm at or into a structure, vehicle, aircraft, or watercraft. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Smith claims the district court abused its discretion at sentencing by not granting him probation because he was remorseful and had a “negligible criminal history.”

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). Smith’s 24- to 60-month prison term falls within the parameters of the relevant statute. See NRS 202.285(1)(b).<sup>1</sup> The record does not suggest the district court’s sentencing decision was based on impalpable or highly suspect evidence. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161


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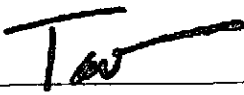
<sup>1</sup>The judgment of conviction erroneously states Smith was convicted of “a Category B Felony, in violation of NRS 202.285(1)(a)” instead of NRS 202.285(1)(b). Upon issuance of the remittitur, the district court shall enter an amended judgment of conviction correcting this clerical error. See NRS 176.565; *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

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(1976). Moreover, the district court's decision to grant probation is discretionary. See NRS 176A.100(1)(c). Accordingly, we conclude Smith has not demonstrated the district court abused its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

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<sup>2</sup>We reject the State's assertions the appeal must be dismissed because it violates NRS 177.015(4) and was filed after defense counsel filed notice he had withdrawn. 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). *Franklin v. State*, 110 Nev. 750, 752, 887 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999), identifies "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. NRAP 46(d)(3) requires counsel to file a motion to withdraw and states, "A motion that is filed after judgment or final determination as provided in SCR 46 will only be granted if the Supreme Court or Court of Appeals has issued a final decision in the matter and the time for filing a petition for rehearing has expired."

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