

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN MITCHELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36558

FILED

JAN 18 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted grand larceny. The district court sentenced appellant to serve 12 to 30 months in prison.

Appellant's sole contention is that the district court abused its discretion at sentencing because it failed to consider all of the possible sentences, including probation. 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)).

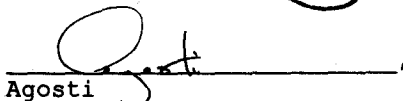
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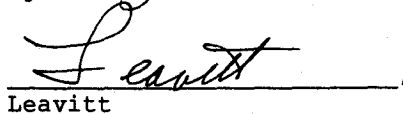
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes. See NRS 205.222; NRS 193.330; NRS 193.130. Moreover, the granting of probation is discretionary¹ and appellant has not demonstrated that the district court abused its discretion. Finally, we note that the district court imposed the sentence that appellant and the State agreed to recommend as part of the plea bargain. We therefore conclude that appellant has not demonstrated that the district court abused its discretion at sentencing.

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

It is so ORDERED.


Shearing J.


Agosti J.


Leavitt J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

¹See NRS 176A.100(1)(c).