

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID L. SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36870

FILED

FEB 21 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 voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in prison.

Appellant contends that the district court abused its discretion at sentencing. In particular, appellant argues that the district court abused its discretion because: (1) the district court failed to advise appellant that it would not impose a sentence less than the sentence stipulated to by appellant; (2) the sentence exceeded that recommended by the Division of Parole and Probation; and (3) the district court was aware that the deadly weapon enhancement was a legal fiction.¹ We conclude that appellant's contention lacks 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

¹Appellant agreed not to challenge the deadly weapon enhancement in order to obtain a more favorable plea bargain.

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 statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute. See NRS 200.080; NRS 193.165.

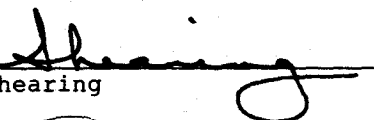
Moreover, appellant agreed as part of the plea bargain to stipulate to a sentence of two consecutive terms of 4 to 10 years in prison. The plea agreement informed appellant that the district court could impose any sentence within the limits prescribed by the relevant statutes. In setting the appropriate sentence, the district court is not required to follow the recommendations of the Division of Parole and Probation.² See *Renard v. State*, 94 Nev. 368, 370, 580 P.2d 470, 471 (1978); see also *Etcheverry v. State*, 107 Nev. 782, 786, 821 P.2d 350, 352 (1991). The record demonstrates that the district court imposed the stipulated sentence based on the facts of the case and the arguments made by the parties, not on any belief that it could not impose a lesser sentence within the statutory limits. Under the

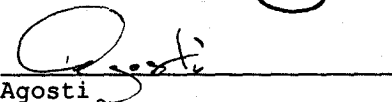
²The Division of Parole and Probation recommended a sentence of two consecutive terms of 16 to 72 months in prison.

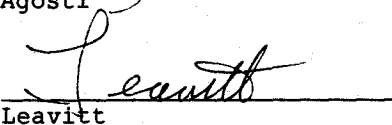
circumstances, we conclude that the district court did not abuse its discretion.

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. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Special Public Defender
Clark County Clerk