IN THE SUPREME COURT OF THE STATE OF NEVADA

ZUI LEV GEITHEIM,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36878

FILED

JAN 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ZUI LEV GEITHEIM,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36879

ORDER OF AFFIRMANCE

These are appeals from judgments of conviction, pursuant to guilty pleas, of one count each of bet pressing and theft. The district court sentenced appellant to serve 3 years in prison for bet pressing and 5 years in prison for theft, to be served concurrently. The district court suspended the bet pressing sentence and placed appellant on probation for 36 months. We elect to consolidate these appeals for all appellate purposes. See NRAP 3(c).[1]

[1]Counsel for appellant filed a single notice of appeal, designating both of the district court cases. The district court clerk transmitted two appeal packets to this court and the cases were docketed in this court as separate appeals--Docket No. 36878 is the appeal from district court case CR93-0527; Docket No. 36879 is the appeal from district court case CR00-1188. Counsel for appellant filed a single fast track statement that discusses both district court cases. We note that both judgments of conviction were entered on the same day, by the same district court judge. We therefore conclude that consolidation is appropriate. Moreover, although Docket No. 36878 was commenced in the district court prior to September 1, 1996, we elect to exercise our discretion and apply the provisions of Nevada Rule of Appellate Procedure 3C to Docket No. 36878.

Appellant's sole contention is that the district court abused its discretion by refusing to suspend the theft sentence and grant probation. In particular, appellant argues that the district court failed to give "due consideration" to the Division of Parole and Probation's recommendation that appellant be granted probation on both charges. 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 statute. See 1989 Nev. Stat., ch. 567, § 16, at 1205 (codified as amended at NRS 205.0835). Moreover, the granting of probation is discretionary. See NRS 176A.100(1)(c).[2]

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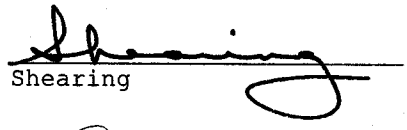
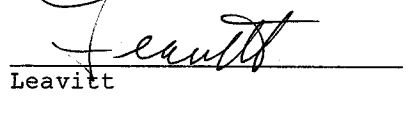
[2]NRS 176A.100 was previously codified at NRS 176.185. The statute has been amended numerous times since appellant committed his offense; however, the statute has always provided that the granting of probation is discretionary.

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

It is so ORDERED.[3]


Shearing, J.


Agosti, J.


Leavitt, J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Ohlson & Springgate
Washoe County Clerk

[3]On October 17, 2000, appellant filed a motion for a stay and bail pending appeal in Docket No. 36879. We deny the motion as moot.