

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY EARL EMERSON, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68908

FILED

NOV 18 2016

ELIZABETHA BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of unlawful sale of a controlled substance. First Judicial District Court, Carson City; James E. Wilson, Judge.


Appellant Gary Earl Emerson, II, claims the district court abused its discretion at sentencing by denying his application to be assigned to a program of treatment pursuant to NRS 453.580 and his petition for admission to the drug court program. He asserts it was undisputed he was a drug addict with a non-violent history of misdemeanor convictions and he had one prior diversion into the drug court program, which he completed successfully,

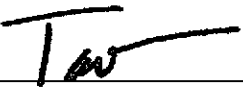
Emerson's sentence of 12 to 36 months in prison is within the statutory limits, *see* NRS 453.321(2)(a), and he does not allege the district court relied on "impalpable or highly suspect evidence," *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). We conclude the district court did not abuse its discretion by rejecting Emerson's request to be placed in a

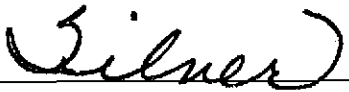
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drug court program, *see* NRS 453.580(1); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
Michael C. Novi
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk