

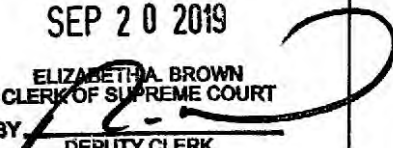
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW JUSTIN MARCELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76923-COA

FILED

SEP 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew Justin Marcelli appeals from a judgment of conviction, pursuant to a no contest plea, of battery with a deadly weapon causing substantial bodily harm. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Marcelli argues the district court abused its discretion by not placing him on probation and by imposing a sentence that falls in the higher end of the sentencing range. Marcelli asserts that, because the district court imposed a sentence at the higher end of the sentencing range, the district court impliedly considered his perceived lack of responsibility when imposing the sentence. Marcelli also asserts the district court improperly considered the offense synopsis in the presentence investigation report (PSI) when imposing sentence.


The granting of probation is discretionary. *See* NRS 176A.100(1)(c); *see generally Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). 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).

Marcelli's sentence of 48 to 135 months is within the parameters provided by the relevant statutes. See NRS 200.481(2)(e)(2). Contrary to Marcelli's claim, it was not improper for the district court to consider the information in the PSI when imposing sentence. See NRS 176.015(6); NRS 176.156(2) (permitting state law enforcement agencies to use a PSI when conducting a public hearing). And because Marcelli has not provided this court with a copy of the transcript of the sentencing hearing, he has not demonstrated the district court relied on impalpable or highly suspect evidence when imposing sentence. Accordingly, we conclude Marcelli has not demonstrated the district court abused its discretion by declining to suspend the sentence and place him on probation, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Thomas L. Stockard, District Judge
Charles B. Woodman
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk