IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MARK STONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37246

FILED

MAR 23 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve 36 to 96 months in the Nevada State Prison.

Appellant's sole contention is that the district court abused its discretion at sentencing by imposing a prison sentence rather than allowing appellant to enter a treatment program to deal with his drug addiction. Citing the dissent in Tanksley v. State,[1] appellant asks this court to review the sentence to see that justice was done.

This court has consistently afforded the district court wide discretion in its sentencing decision.[2] Accordingly, we will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate

[1]113 Nev. 844, 944 P.2d 240 (1997).

[2]See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[3] Moreover, regardless of its severity, a sentence that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[4]

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. Although the district court had discretion to grant probation in this case,[5] there is nothing in the record to suggest that the district court abused its discretion in refusing to grant probation, particularly considering appellant's criminal history, which made him eligible for adjudication as a habitual criminal.[6] Furthermore, the sentence imposed is within the parameters provided by the relevant statute.[7] That

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[3]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[4]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-20 (1979)).

[5]See NRS 176A.100(1)(c).

[6]The State agreed not to seek habitual criminal status as part of the plea negotiations.

[7]See NRS 205.060(2) (providing for prison term of 1 to 10 years for burglary).

sentence does not appear to be so grossly disproportionate to the offense as to shock the conscience. Accordingly, the sentence does not constitute cruel and unusual punishment. Under the circumstances, we conclude that the district court did not abuse its discretion in sentencing appellant to a prison term rather than probation.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Shearing, J.

Agosti, J.

Rose, J.

cc: Hon. Brent T. Adams, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk