

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DEAN HERRMANN,

No. 37528

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**MAY 08 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. R. [Signature]  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny. The district court sentenced appellant to serve 12 to 36 months in prison and to pay \$800.00 in restitution.

Appellant's sole contention is that the district court abused its discretion by refusing to grant probation. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> 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."<sup>2</sup> Moreover, "a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional."<sup>3</sup>

<sup>1</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

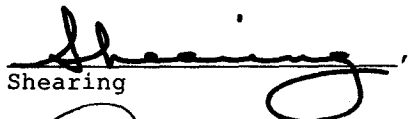
<sup>2</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

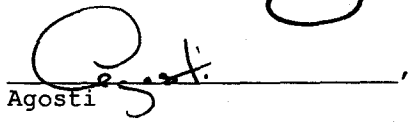
<sup>3</sup>Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995) (citing Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978)), modified on other grounds by Koerschner v. State, 116 Nev. \_\_\_, 13 P.3d 451 (2000).

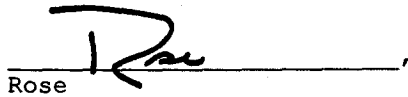
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statutes.<sup>4</sup> Moreover, the granting of probation is discretionary.<sup>5</sup>

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Rose

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

<sup>4</sup>See NRS 205.220; NRS 205.222(2); NRS 193.130.

<sup>5</sup>See NRS 176A.100(1)(c).