IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT TROY GATES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84301-COA

ORDER OF AFFIRMANCE

Robert Troy Gates appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempt to buy, possess, receive, or withhold stolen property. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Gates argues the district court abused its discretion at sentencing when it imposed the maximum possible sentence and not probation. Specifically, Gates claims the district court exhibited bias and closed its mind to all of the evidence by focusing on Gates' past incidents of not appearing in various courts instead of the evidence presented in mitigation or the recommendations of the parties.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes "[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); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). The granting of probation or placement into a treatment program

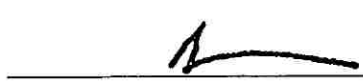
is discretionary. *See* NRS 176A.100(1)(c); NRS 176A.240. "[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show the judge has closed his or her mind to the presentation of all the evidence." *Cameron*, 114 Nev. at 1283, 968 P.2d at 1171.

Gates' sentence of 19 to 48 months in prison is within the parameters provided by the relevant statutes. *See* NRS 193.130(2)(d); NRS 193.153(1)(a)(4); NRS 205.275(2)(c). And Gates does not allege that the district court relied on impalpable or highly suspect evidence. The district court considered Gates' criminal history, the arguments of the parties, and Gates' allocution prior to imposing Gates' sentence. Gates thus fails to demonstrate the district court was biased or that it closed its mind to the presentation of all the evidence. Further, the district court is not required to follow the sentencing recommendations of the parties. *See Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972). Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing Gates, and we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk