IN THE SUPREME COURT OF THE STATE OF NEVADA

CAROL REGINA COLEMAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38328

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of a controlled substance for the purpose of sale in violation of NRS 453.337. The district court sentenced appellant to serve 12 to 48 months in prison, with credit for 32 days of presentence incarceration.

Appellant first contends that the district court abused its discretion in finding that appellant had not provided substantial assistance to law enforcement warranting probation. Specifically, appellant suggests that the district court misinterpreted NRS 453.3405 by refusing to consider assistance she rendered prior to her arrest in this case and refusing to consider assistance she provided that police were unable to investigate for various reasons.[1] We conclude that appellant is not entitled to relief on this claim.

NRS 453.3405(2) permits the district court judge to reduce or suspend the sentence of a person convicted of violating NRS 453.3385, 453.339, or 453.3395 "if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals or of any other person involved in trafficking in a controlled substance." The statutes referenced in NRS 453.3405(2) involve trafficking in a controlled substance.

The substantial assistance provision does not apply in this case because appellant was not convicted of violating any of the trafficking

[1]As to this latter argument, appellant relies on Parrish v. State, 116 Nev. ___, 12 P.3d 953 (2000).

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statutes listed in NRS 453.3405(2).[2] Moreover, unlike the trafficking offenses listed in NRS 453.3405(2) for which probation is not available unless the defendant provides substantial assistance,[3] appellant was eligible for probation as a matter of law.[4] While appellant's attempts to provide substantial assistance could have theoretically put her in a more favorable light at sentencing, she was not required to provide substantial assistance to become eligible for probation.

To the extent that the district court was under the misconception at sentencing that appellant was not eligible for probation unless she provided substantial assistance, we conclude that there was error. However, based on our review of the record, we further conclude that the error did not affect appellant's substantial rights. It is apparent that the district court had no inclination to grant appellant probation regardless of whatever assistance she may have provided to law enforcement. Instead, the district court primarily focused on appellant's criminal history:

> Your criminal history suggests to me, Ms. Coleman, a decade and a half, which is almost astounding, of criminal history in which time and again you have succeeded in convincing sentencing authorities to give you time served, probation, almost never facing the ultimate consequences associated with your behavior.

Because the error did not affect appellant's substantial rights, we conclude that appellant is not entitled to relief on her claim regarding the substantial assistance statute.[5]

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[2]We note that a person convicted of a violation of NRS 453.337 may be punished under the trafficking statutes where the offense involves a trafficking quantity of a controlled substance. See NRS 453.337(2). The presentence report indicates that this case did not involve a trafficking amount of a controlled substance and the prosecutor made a similar representation during the sentencing hearing.

[3]NRS 453.3405(1).

[4]See NRS 453.337(2)(a) (providing that first offense possession of a controlled substance for purposes of sale is a category D felony); NRS 193.130(2)(d) (providing that sentence for category D felony is minimum term of not less than 1 year and maximum term of not more than 4 years); NRS 176A.100(1)(c) (providing that district court may suspend execution of sentence and grant probation "as the court deems advisable").

[5]See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Appellant next asks this court to review the sentence imposed to see that justice has been done. Appellant relies on the dissent in Tanksley v. State[6] as support. We conclude that this contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[7] Accordingly, we 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."[8]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence. Furthermore, we note that the sentence imposed was within the parameters provided by the relevant statutes.[9] Appellant has not demonstrated that the district court abused its discretion in sentencing appellant to serve 12 to 48 months in prison.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Jenny Hubach
Washoe County Clerk

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[6]113 Nev. 844, 944 P.2d 240 (1997).

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

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

[9]See NRS 453.337(2)(a); NRS 193.130(2)(d).