

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KELLY LANE ALBIANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90154-COA

FILED

AUG 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kelly Lane Albani appeals from a judgment of conviction, entered pursuant to a no contest plea, of attempted reckless driving resulting in substantial bodily harm or death. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Albani claims the district court abused its discretion by sentencing him to a term of 19 to 48 months in prison rather than placing him on probation. In support of his claim, Albani relies on the dissent in *Sims v. State*, 107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting), as well as the concurrence in *Santana v. State*, 122 Nev. 1458, 1464, 148 P.3d 741, 745 (2006) (Rose, C.J., concurring), which both argue for an expanded appellate review of sentencing decisions.

In this matter, the granting of probation was discretionary. See NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) ("The sentencing judge has wide discretion in imposing a sentence . . ."). 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).

Albiani’s sentence of 19 to 48 months in prison is within the parameters provided by the relevant statutes, see NRS 193.153(1)(a)(3); NRS 484B.653(1)(b), and Albiani does not allege the district court relied on impalpable or highly suspect evidence. Moreover, the record reflects that the district court heard arguments from Albiani’s counsel, Albiani spoke on his own behalf in mitigation, and the court considered Albiani’s arguments and prior performance on probation before imposing his sentence. We therefore conclude the district court did not abuse its discretion by declining to suspend the sentence and place Albiani on probation.¹ Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹To the extent Albiani argues on appeal that we should depart from *Sims* or *Santana* and conduct a broader review of the district court’s sentencing decision, this court cannot overrule Nevada Supreme Court precedent. See *Eivazi v. Eivazi*, 139 Nev. 408, 418 n.7, 537 P.3d 476, 487 n.7 (Ct. App. 2023).

cc: Hon. Alvin R. Kacin, District Judge
Ben Gaumond Law Firm, PLLC
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk