IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH BRUMLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38453

FILED

FEB 12 2002

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 felony attempted issuance of a check without sufficient funds. The district court sentenced appellant Kenneth Brumley to serve a prison term of 12-34 months, and ordered the sentence to run consecutively to the sentence in another case. Brumley was also ordered to pay restitution in the amount of $954.64, and given credit for 47 days time served.

Brumley contends that the district court abused its discretion at sentencing by relying on unsupported and improper prejudicial evidence. Brumley argues that at the sentencing hearing, the district court considered the statement made by the State that he was denied parole on another case, and therefore, was unable to make restitution to the victims in the present case, because "he has made a very poor

adjustment within the institution itself." Brumley's contention is belied by the record.

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

In the instant case, the sentence imposed by the district court is within the parameters provided by the relevant statutes.[4] Moreover, Brumley's contention is belied by the record. Our review of the sentencing hearing transcript reveals that the district court expressly stated that it

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

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

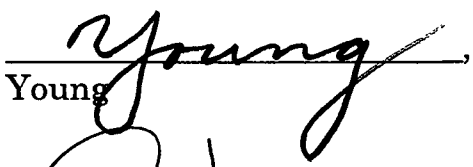
[3]Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995), modified on other grounds by Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000).

[4]See NRS 205.130; NRS 193.330(1)(a)(5).

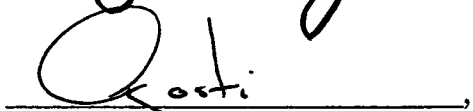
was basing its sentencing decision on Brumley's significant prior criminal history as documented in the presentence investigation report prepared by the Division of Parole and Probation; the district court stated that it would follow the Division's recommendation. The district court did not refer to or rely on the statement made by the State pertaining to Brumley's parole denial, and Brumley has not provided this court with any evidence to the contrary. Therefore, we conclude that the district court did not abuse its discretion at sentencing by relying on impalpable or highly suspect evidence.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Young



_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. John P. Davis, District Judge
Attorney General/Carson City
Nye County District Attorney/Pahrump
Nye County District Attorney/Tonopah
Robert E. Glennen III
Nye County Clerk