



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA JOHN MCCARTHY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 92083-COA

ORDER OF AFFIRMANCE

Joshua John McCarthy appeals from a judgment of conviction, entered pursuant to a guilty plea, of peer, peep or spy through a window, door or other opening of a dwelling of another while in possession of a camera or other video or audio recording device. Second Judicial District Court, Washoe County; Hon. Tammy Riggs, Judge.

McCarthy argues the district court abused its discretion at sentencing when it compared McCarthy to another criminal defendant and imposed a 30-day jail term as a condition of probation. 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).

McCarthy’s sentence of 364 days in jail, suspended for a definite term of 12 months, is within the parameters provided by the relevant statutes.

See NRS 176A.100(1)(c); NRS 176A.500(1)(a)(1); NRS 193.140; NRS 200.603(2)(b). And we conclude the district court did not consider information or accusations founded on facts supported only by highly suspect or impalpable evidence. Although the district court referenced another criminal defendant, the district court did not compare the acts committed by McCarthy in this matter to those convictions ultimately sustained by the other defendant. Rather, the district court stated it wanted to impress upon McCarthy the fear his actions caused in the community. Further, there is no indication in the record that the district court's sentencing decision was meaningfully impacted by any analogy to the other case.¹ Instead, the district court indicated its sentencing decision was based on McCarthy's unchanged pattern of behavior and on the need for deterrence. Having considered the sentence and the crime, we conclude the district court did not abuse its discretion in sentencing McCarthy, and we

ORDER the judgment of conviction AFFIRMED.


Bulla, C.J.


Gibbons, J.


Westbrook, J.

¹We are unpersuaded by McCarthy's reliance on two out-of-state cases, in which the prosecution referred to notorious criminals in front of a sentencing jury. Here, McCarthy was sentenced by a judge, and judges "spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence." *Randell v. State*, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993).

cc: Hon. Tammy Riggs, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk