

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGELIO AVIN TORRES,

No. 38722

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

FEB 11 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of level-three trafficking in a controlled substance. The district court sentenced appellant Rogelio Avin Torres to serve a prison term of 60 to 180 months.

Torres' sole contention is that the district court erred in refusing to grant him probation in light of the fact that he: (1) provided substantial assistance to law enforcement; (2) had no prior criminal history; and (3) had completed Washoe County's HISTEP program

wherein he served as a platoon leader. We conclude that Torres' contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> 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."<sup>2</sup> Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.<sup>3</sup>

In the instant case, Torres does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed by the district court was actually lower than the parameters prescribed by

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<sup>1</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

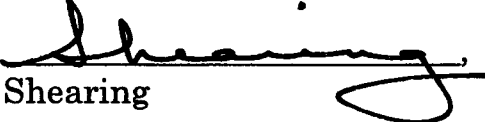
<sup>2</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

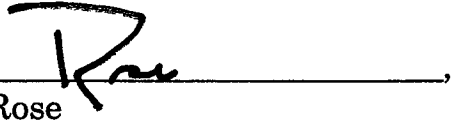
<sup>3</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).


the relevant statute, and that the district court reduced Torres' sentence because it found that Torres had performed substantial assistance.<sup>4</sup> Moreover, the granting of probation is discretionary.<sup>5</sup>

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

ORDER the judgment of conviction AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

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<sup>4</sup>See NRS 453.3385(3) (providing for a prison term of either life with the possibility of parole in 10 years or a 25 year prison term with the possibility of parole in 10 years); NRS 453.3405(2) (providing that the district court may reduce a defendant's sentence if it finds he performed substantial assistance).

<sup>5</sup>See NRS 176A.100(1)(c).

cc: Hon. Jerome Polaha, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk