

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE MARTINEZ,

No. 38777

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

FEB 8 2002

JANETTE M. BLOOM
CLERK OF THE SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery. The district court sentenced appellant Eddie Martinez to serve 48 to 130 months in prison.

Martinez first contends that the district court abused its discretion in sentencing because it determined his sentence prior to conducting a sentencing hearing. In particular, Martinez notes that the judgment of conviction is file-stamped October 15, 2001, a day before the October 16, 2001, sentencing hearing, and argues that “[t]he prior date stamp is an objective showing of prejudice” that effectively gives rise to a presumption that the district court did not act impartially toward Martinez. We disagree.

Although the judgment of conviction was inadvertently file-stamped October 15, the district court’s docket sheet indicates that the clerk properly entered the judgment of conviction on October 16, 2001, the day of Martinez’ sentencing hearing. The text of the judgment of conviction also indicates that Judge Steinheimer signed the judgment on

October 16, 2001. Finally, the record of the sentencing hearing reveals that the district court entertained arguments from counsel and listened to Martinez' statement before imposing his sentence. Accordingly, we reject Martinez' contention that the district court determined his sentence without considering counsel's arguments or the mitigating evidence.

Martinez further contends that the district court abused its discretion at sentencing because the sentence imposed is too harsh. Specifically, Martinez argues that the sentence imposed is excessive in light of the fact that Martinez: (1) committed the crime while in the midst of an alcoholic blackout; (2) had been accepted into a six month alcohol treatment program; and (3) "was waking up to his addiction problems and wanted to make a change for himself." We conclude that Martinez' contention lacks merit.

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,

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

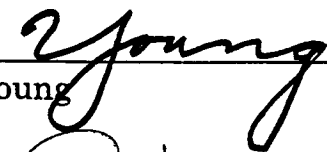
²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


and the sentence is not so unreasonably disproportionate as to shock the conscience.³

In the instant case, Martinez 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 was within the parameters provided by the relevant statute.⁴

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General/Carson City
Washoe County District Attorney
Jenny Hubach
Washoe County Clerk

³Blume 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)).

⁴See NRS 200.380.