

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LEONDUS MOSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38954

FILED

MAR 27 2002

JANE LEE 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 one gross misdemeanor count of unlawful taking of a motor vehicle. The district court sentenced appellant James Leondus Mosey to serve a jail term of 12 months, and ordered him to pay restitution in the amount of \$200.00; he was given credit for 86 days time served.

Citing the dissent in Tanksley v. State,¹ Mosey's sole contention is that this court should review the sentence imposed by the district court to determine whether justice was done. Mosey argues that the district court erred by simply following the recommendations of the Division of Parole and Probation and the State, and that it would have been more appropriate to suspend Mosey's sentence and place him on a term of structured probation. We conclude that Mosey's contention is without merit.

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

This court has consistently afforded the district court wide discretion in its sentencing decision.² 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."³ 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.⁴

In the instant case, Mosey does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statutes.⁵ Moreover, the granting of probation is discretionary.⁶

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

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

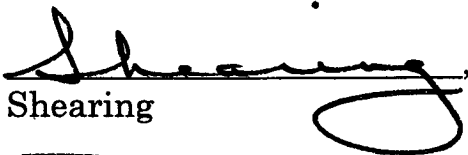
⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

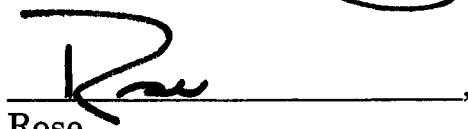
⁵See NRS 205.2715; NRS 193.140.


⁶See NRS 176A.100(1)(c).

Therefore, having considered Mosey's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing J.


Rose J.


Becker J.

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk