IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD MABY, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 39067
JAMES EDWARD MABY, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 39076

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction, pursuant to guilty pleas, of one count each of being an ex-felon in possession of a firearm (count I), unlawful taking of a motor vehicle (count II), eluding a police officer (count III), and possession of a stolen motor vehicle (count IV). The district court sentenced appellant James Edward Maby to serve a prison term of 16-72 months for count I, a concurrent jail term of 12 months for count II, a consecutive prison term of 24-60 months for count III, and a consecutive prison term of 19-60 months for count IV. Maby was also ordered to pay restitution in the amount of $7,396.13.

Citing the dissent in Tanksley v. State,[1] Maby's sole contention is that this court should review the sentence imposed by the district court to determine whether justice was done. Maby argues that

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

the district court failed to exercise its sentencing discretion by simply following the recommendations of the Division of Parole and Probation and the State, and by refusing to consider probation as a sentencing option. We conclude that Maby's contention is without merit.

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, Maby 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]

---

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

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

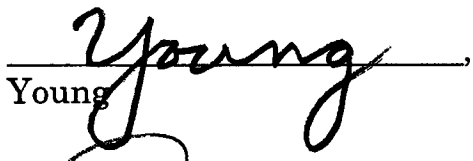
[4]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[5]See NRS 202.360; NRS 205.2715; NRS 193.140; NRS 484.348; NRS 205.273.

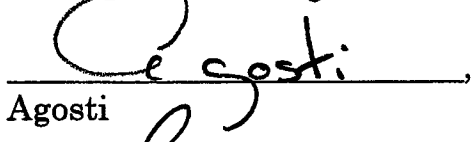
[6]See NRS 176A.100(1)(c).

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

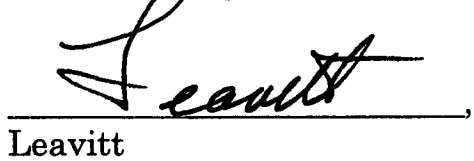
ORDER the judgments of conviction AFFIRMED.



_____, J.
Young



_____, J.
Agosti



_____, J.
Leavitt

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