

IN THE SUPREME COURT OF THE STATE OF NEVADA

GELACIO MARTINEZ A/K/A GELACIO
MARTINEZ-URIBE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39555

FILED

SEP 09 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant Gelacio Martinez to serve a prison term of 24-60 months, and ordered him to pay a fine of \$5,000.00; he was given credit for 320 days time served.

Martinez' sole contention is that the district court abused its discretion at sentencing because the sentence is too harsh. Citing to the dissent in Tanksley v. State¹ for support, Martinez argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Martinez' 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

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

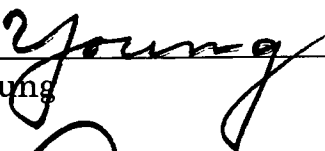
²See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

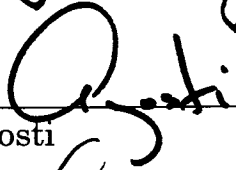
accusations founded on facts supported only by impalpable or highly suspect evidence.”³ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

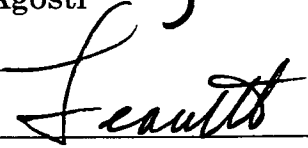
In the instant case, Martinez does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional; in fact, Martinez concedes that his sentence was “legally justified.” Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁵

Having considered Martinez’ contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

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 193.130(2)(d); NRS 453.3385(2).

cc: Hon. James W. Hardesty, District Judge
Robert C. Bell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk