

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LINNEMEYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39920

FILED

OCT 08 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of assault with a deadly weapon. The district court sentenced appellant Jack Linnemeyer to serve a prison term of 28 to 72 months.

Linnemeyer's sole contention is that the district court abused its discretion at sentencing. Linnemeyer argues that the sentence is too harsh given that he was suffering from alcohol and drug problems and had been accepted into a drug treatment program to assist him with those problems. Citing the dissent in Tanksley v. State,¹ Linnemeyer asks this court to review the sentence to see that justice was done. We conclude that Linnemeyer'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

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).

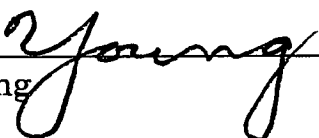
suspect evidence."³ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

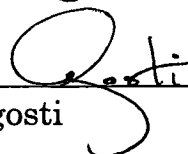
In the instant case, Linnemeyer does not allege that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁵ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Linnemeyer's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

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 200.471(2)(b) (providing for a prison sentence of 1 to 6 years).

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk