

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY WEST ENTSMINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40165

FILED

JUN 12 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of lewdness with a child under the age of 14 years. The district court sentenced appellant Gregory Entsminger to serve a term of life in the Nevada State Prison with the possibility of parole after ten years and lifetime supervision upon his release from prison.

Entsminger contends first that the district court abused its discretion by refusing to grant him probation for the offense. We conclude that Entsminger's 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

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).

cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.³

In the instant case, Entsminger 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 is within the parameters provided by the relevant statute.⁴ Additionally, the granting of probation is discretionary.⁵ We conclude, therefore, that the district court did not abuse its discretion in sentencing Entsminger.

Entsminger also asks this court to review his sentence according to the dissenting opinion in Tanksley v. State.⁶ We decline to do so because we do not lightly encroach upon the legislature's power to define crimes and determine punishments.⁷

Having considered Entsminger's contentions and concluded that they are without merit, we

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)).

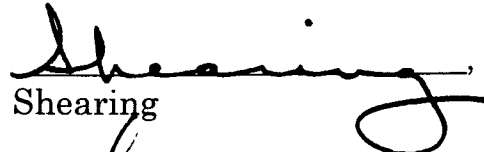
⁴See NRS 201.230.


⁵See NRS 176A.100(1)(c).

⁶113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

⁷See Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994) (quoting Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978)).

ORDER the judgment of conviction AFFIRMED.


Shearing, J.


Leavitt, J.


Becker, J.

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