

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN BARRIENTOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40419

FILED

APR 21 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery causing substantial bodily harm. The district court sentenced appellant Martin Barrientos to serve a prison term of 12 to 60 months.

Barrientos's sole contention is that the district court abused its discretion by refusing to grant probation so that Barrientos could pursue treatment for his drug addiction and mental health condition. Barrientos asks this court to review his sentence according to the dissent in Tanksley v. State.¹ We decline to do so and conclude that Barrientos'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

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

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).

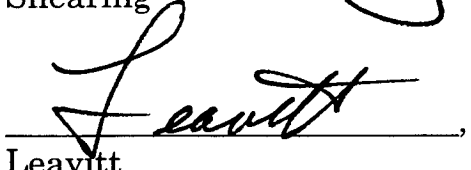
cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

In the instant case, Barrientos does not allege that the district court relied on palpable 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

Having considered Barrientos's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

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 200.481(2)(b), NRS 193.130(2)(c).

⁶See NRS 176A.100(1)(c).

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