

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN PERRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40541

FILED

FEB 27 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant Stephen Perry to serve 48 to 120 months in the Nevada State Prison.

Perry's sole contention on appeal is that the district court abused its discretion at sentencing by sending him to prison rather than giving him probation conditioned on his participation in a long-term care drug treatment program for his longtime heroin addiction. Perry cites to the dissent in Tanksley v. State<sup>1</sup> for the proposition that this court should independently review sentencing decisions of district courts. We decline Perry's invitation to review his sentence. We also conclude that his contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> 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

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<sup>1</sup>113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

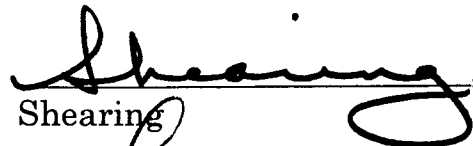
<sup>2</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

suspect evidence."<sup>3</sup> 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.<sup>4</sup>

In the instant case, Perry 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.<sup>5</sup> Moreover, the granting of probation is discretionary.<sup>6</sup>

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

ORDER the judgment of conviction AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

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<sup>3</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>4</sup>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)).

<sup>5</sup>See NRS 205.060(2).

<sup>6</sup>See 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