

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH MONTALBANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40690

FILED

APR 28 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of being an ex-felon in possession of a firearm. The district court sentenced appellant Joseph Montalbano to serve a prison term of 12 to 30 months.

Montalbano's sole contention is that the district court abused its discretion at sentencing by refusing to grant probation. Montalbano argues that he should have received probation given that he was a Vietnam War veteran and suffered from serious health disabilities. Citing the dissent in Tanksley v. State,¹ Montalbano asks this court to review the district court's sentence to determine whether a probationary term was more appropriate. We conclude that the district court did not abuse its discretion in refusing to grant probation.

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).

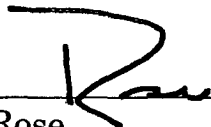
²See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

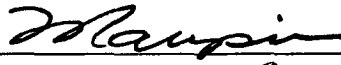
suspect evidence."³ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

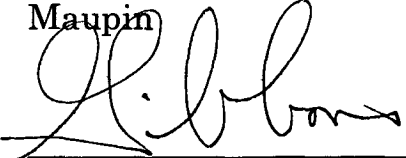
In the instant case, Montalbano does not allege that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁵ Moreover, the granting of probation is discretionary.⁶ Accordingly, the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

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 202.360(3) (providing for a prison sentence of 1 to 6 years).

⁶See NRS 176A.100(1)(c).

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