

IN THE SUPREME COURT OF THE STATE OF NEVADA

GODIELL D. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40861

FILED

AUG 19 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted grand larceny. The district court sentenced appellant Godiell D. Harris to serve a prison term of 12 to 34 months.

Harris's sole contention is that the district court abused its discretion at sentencing by refusing to grant probation. Harris argues that he should have received probation given that: (1) he has no prior felony or gross misdemeanor convictions; (2) he has no prior grants of probation and parole; and (3) he merely broke into an empty commercial vehicle. 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.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

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

suspect evidence."² 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.³

In the instant case, Harris does not allege that the district court relied on impalpable or highly suspect evidence, and we note that the sentence imposed was within the parameters provided by the relevant statutes.⁴ Moreover, the granting of probation is discretionary.⁵ Finally, the sentence imposed is not so unreasonably disproportionate as to shock the conscience. Although Harris had no prior felony or gross misdemeanor convictions, we note that he had twelve prior arrests, four misdemeanor convictions, and failed to attend his court-ordered interview with the Department of Parole and Probation. Accordingly, the district court did not abuse its discretion at sentencing.

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

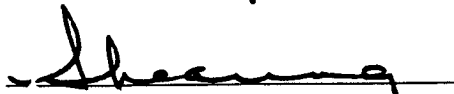
³Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

⁴See NRS 205.222(2); NRS 193.330(1)(a)(4); NRS 193.130(2)(d) (providing for a prison sentence of 1 to 4 years for a category D felony, or a jail term of not more than 1 year or a fine of not more than \$2,000.00 for a gross misdemeanor).

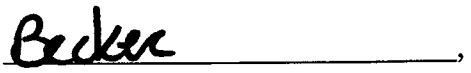
⁵See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk