

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS JAY MURRIETA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40920

**FILED**

SEP 24 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of conspiracy to possess stolen property. The district court sentenced appellant to a jail term of 12 months.

Appellant's sole contention is that the district court abused its discretion by refusing to grant probation. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</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 suspect evidence."<sup>2</sup> Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional,

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

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

and the sentence is not so unreasonably disproportionate as to shock the conscience.<sup>3</sup>

In the instant case, appellant does not allege that the district court relied on impalpable 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.<sup>4</sup> Moreover, the granting of probation is discretionary.<sup>5</sup>

Appellant argues that he would have had a better chance at being granted probation if he had not failed to meet with the officer from the Division of Parole and Probation. At sentencing, however, the district court specifically asked the representative of the Division if the sentencing recommendation would have been different if appellant had been interviewed. The Division replied that the recommendation would not have been different. Additionally, appellant's counsel argued in favor of probation at sentencing, but the district court decided on a jail term, instead, based on appellant's criminal record. We conclude that the district court did not abuse its discretion by refusing to give appellant another chance to meet with the Division.

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<sup>3</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>4</sup>See NRS 205.275; NRS 199.480(3).

<sup>5</sup>See NRS 176A.100(1)(c).

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.  
Becker

Shearing, J.  
Shearing

Gibbons, J.  
Gibbons

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