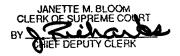
IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS WARREN GILMORE, Appellant,

vs. THE STATE OF NEVADA, Respondent. No. 40928

MAY 0 8 2003

ORDER OF AFFIRMANCE



This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of felony domestic battery. The district court sentenced appellant Nicholas Warren Gilmore to serve two concurrent prison terms of 18-60 months, and ordered him to pay \$170.00 in restitution. Gilmore was given credit for 144 days time served.

Gilmore's sole contention is that the district court abused its discretion at sentencing. Citing to the dissent in <u>Tanksley v. State</u>¹ for support, Gilmore argues that this court should review the sentence imposed by the district court to determine whether justice was done. Gilmore contends that because his criminal history only involved "fighting with his wife," and that he "may not have been the best example of a husband but he was a good father," a minimum sentence of 12 months would be more appropriate. We disagree.

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

This court has consistently afforded the district court wide discretion in its sentencing decision² and 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." 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, Gilmore does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. The sentence imposed was within the parameters provided by the relevant statutes.⁵ We further note that the plea negotiations were favorable to Gilmore – he was initially charged with three counts of felony domestic battery. Accordingly, we conclude that the sentence imposed is not too harsh, is not disproportionate to the crime, does not constitute cruel and unusual punishment, and that the district court did not abuse its discretion at sentencing.

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).

⁴<u>Blume v. State</u>, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting <u>Culverson v. State</u>, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

⁵See NRS 200.485(1)(c); NRS 200.481; NRS 193.130(2)(c); NRS 33.018.

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

ORDER the judgment of conviction AFFIRMED.

J.

J. Maupin J. Gibbons

Hon. Brent T. Adams, District Judge cc: Washoe County Public Defender Attorney General Brian Sandoval/Carson City

Washoe County District Attorney Richard A. Gammick

Washoe District Court Clerk