

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS WARREN GILMORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40928

**FILED**

MAY 08 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 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 Tanksley v. State<sup>1</sup> 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.

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<sup>1</sup>113 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 decision<sup>2</sup> 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.”<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, 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.<sup>5</sup> 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.

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


<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 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.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

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