

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIT RUSSELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41039

FILED

MAY 13 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 one count of robbery. The district court sentenced appellant Kit Russell to serve 26 to 120 months in the Nevada State Prison.

Russell's sole contention is that the district court abused its discretion by refusing to grant probation. Russell also asks this court to review her sentence according to the dissent in Tanksley v. State.¹ We decline to review Russell's sentence and conclude that her contention is without merit.

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 suspect evidence."³ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional,

¹113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

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

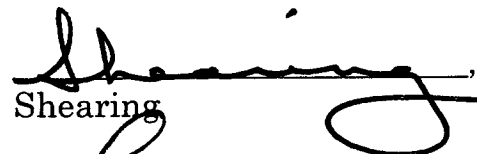
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

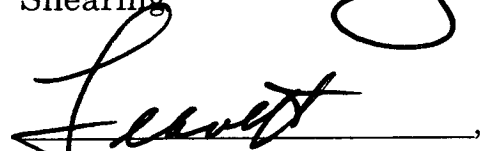
and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

In the instant case, Russell does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statute.⁵ Moreover, the granting of probation is discretionary.⁶ The district court acted well within its discretion by deciding probation was inappropriate in this case because Russell did not successfully complete the drug treatment program she entered prior to sentencing.

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

ORDER the judgment of conviction AFFIRMED.


Shearing, J.


Leavitt, J.


Becker, J.

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 200.380(2).

⁶See NRS 176A.100(1)(c).

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk