IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMY LEE HORSTMAN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41580

FILED

FEB 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a stolen motor vehicle. The district court sentenced appellant Jimmy Lee Horstman, Jr., to serve a prison term of 24 to 60 months.[1]

Horstman contends that the district court abused its discretion at sentencing in refusing to grant probation. Horstman argues that the sentence is too harsh given that: (1) he initially had permission from his brother to take the vehicle at issue; and (2) Horstman had finally admitted that he needed help for his drug addiction and had been accepted into two drug treatment programs. Citing to the dissent in Tanksley v. State,[2] Horstman asks this court to review the sentence to see that justice was done. We conclude that Horstman's contention is without merit.

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[1]The sentence imposed by the district court was the sentence recommended by the Division of Parole and Probation, as well as the prosecutor.

[2]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 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."[3] Regardless of its severity, 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 to the crime as to shock the conscience.[4]

In the instant case, Horstman does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[5] Moreover, the granting of probation is discretionary.[6] Finally, the sentence imposed is not so unreasonably disproportionate to the crime

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[3]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[4]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)).

[5]See 205.273; NRS 193.130(2)(c) (providing for a prison sentence of 1 to 5 years).

[6]See NRS 176A.100(1)(c).

as to shock the conscience. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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