

IN THE SUPREME COURT OF THE STATE OF NEVADA

LELAND HOLBROOK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41603

FILED

NOV 21 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted robbery. The district court sentenced appellant Leland Holbrook to serve a prison term of 26 to 120 months.

Holbrook's sole contention is that the district court abused its discretion at sentencing in refusing to grant probation. Holbrook argues that the sentence is too harsh given that: (1) his criminal history consisted only of drug-related offenses; (2) he admitted that he needed help for his drug addiction and had been accepted into a drug treatment program; and (3) he had an opportunity for gainful employment. Citing the dissent in Tanksley v. State,¹ Holbrook asks this court to review the sentence to see that justice was done. We conclude that Holbrook's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and will refrain from interfering with

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

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.”² 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 as to shock the conscience.³

In the instant case, Holbrook 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 was within the parameters provided by the relevant statutes.⁴ Moreover, the granting of probation is discretionary.⁵ Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience.⁶ Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

³Blume 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)).

⁴See NRS 200.380(2); NRS 193.330(1)(a)(2) (providing for a prison sentence of 1 to 10 years).


⁵See NRS 176A.100(1)(c).

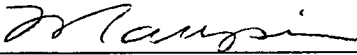
⁶Holbrook was originally charged with robbery with the use of a deadly weapon for taking personal property from an individual by threatening him with a knife. At sentencing, the prosecutor argued for
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Having considered Holbrook's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

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

... continued

the maximum sentence of 48 to 120 months, noting that Holbrook had five prior felony convictions.