IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY GUDGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41833

FILED

NOV 21 2003

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 felony possession of a controlled substance. The district court sentenced appellant Randy Gudger to serve a prison term of 12 to 34 months.

Gudger contends that the district court abused its discretion at sentencing in refusing to grant probation. Gudger argues that the sentence is too harsh given that: (1) his criminal history consisted only of non-violent drug offenses; (2) he had admitted that he needed help for his drug addiction; and (3) he had been accepted into two drug treatment programs. Citing the dissent in Tanksley v. State,[1] Gudger asks this court to review the sentence to see that justice was done. We conclude that Gudger'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

[1]113 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, Gudger 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.[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. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

[3]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)).

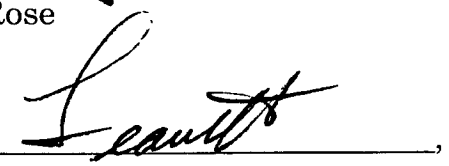
[4]See NRS 453.336(2)(b); NRS 193.130(2)(d) (providing for a prison sentence of 1 to 4 years).

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

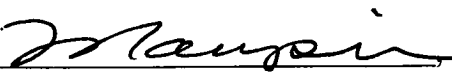
Having considered Gudger's contention and concluded that it is without merit, we

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