

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBIN RAY MEARS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41938

FILED

FEB 12 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to a prison term of 48 to 120 months.

Appellant's sole contention is that the district court erred at sentencing because the district court merely imposed the sentence to which the parties stipulated rather than independently exercising its discretion. We conclude that appellant's contention is without merit.

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."<sup>1</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>2</sup>

<sup>1</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>2</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)).

In the instant case, appellant 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 was within the parameters provided by the relevant statute.<sup>3</sup> The fact that the district court imposed the sentence stipulated to by the parties does not, by itself, demonstrate an abdication of the district court's sentencing discretion. Appellant conceded at sentencing that he was pleading guilty to burglary and stipulating to the sentence imposed in order to avoid being adjudicated a habitual criminal. Additionally, this court notes that the Division of Parole and Probation recommended the sentence imposed. We therefore conclude that the district court did not abuse its discretion at sentencing by imposing the stipulated sentence.

Having considered appellant'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

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<sup>3</sup>See NRS 205.060(2).

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