

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SHANE WACKERLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42008

FILED

APR 13 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years. The district court sentenced appellant to a prison term of life with the possibility of parole after ten (10) years.

Appellant's sole contention is that the district court abused its discretion by refusing to grant probation. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>1</sup> 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>2</sup> Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional,

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<sup>1</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


<sup>2</sup>Silks 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.<sup>3</sup>

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 is within the parameters provided by the relevant statute.<sup>4</sup> Moreover, the granting of probation is discretionary.<sup>5</sup>

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

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Agosti

 \_\_\_\_\_, J.  
Gibbons

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<sup>3</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)).

<sup>4</sup>See NRS 201.230(2).

<sup>5</sup>See NRS 176A.100(1)(c).

cc: Hon. Connie J. Steinheimer, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk