IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MEDFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42122

FILED

MAR 05 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of failure to register as a sex offender. The district court sentenced appellant Kevin Medford to serve a prison term of 12 to 30 months.

Medford, for the first time on direct appeal, contends that he should be allowed to withdraw his guilty plea because it was not knowing and voluntary. In particular, Medford contends that his guilty plea was involuntary because he was under the influence of medication and unknowing because his attorney refused to answer his questions about the plea agreement. We decline to consider this issue. Generally, this court will not consider a challenge to the validity of the guilty plea on direct appeal from the judgment of conviction.[1] "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."[2] After having reviewed the

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[1]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[2]Id.; but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989), modified on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2002), and Smith v. State, 110 Nev. 1009, 1010 n.1,

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record on appeal, we conclude that Medford must first raise his claim regarding the validity of his guilty plea in the district court.

Medford also contends that the district court abused its discretion at sentencing in refusing to follow the parties' joint recommendation that Medford receive probation. In particular, Medford argues that the district court based its sentencing decision on a mistake of fact, namely, its erroneous belief that Medford would not register as a sex offender. Citing to the dissent in Tanksley v. State,[3] Medford asks this court to review the sentence to see that justice was done. We conclude that Medford'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 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."[4] Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is

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. . . continued

879 P.2d 60, 61 n.1 (1994) (considering the validity of a guilty plea on direct appeal where the record on appeal clearly demonstrates error).

[3]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

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

constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[5]

In the instant case, Medford does not allege that the sentencing statutes are unconstitutional or that the sentence imposed is unreasonably disproportionate to the crime. Additionally, we note that the sentence imposed was within the parameters provided by the relevant statutes,[6] and that the granting of probation is discretionary.[7] Finally, we conclude that Medford has failed to show that district court based its sentencing decision on a mistaken belief that Medford failed to register as a sex offender. At the sentencing hearing, defense counsel informed the district court that Medford was currently registered, and the district court acknowledged that fact. Additionally, a representative of the Division of Parole and Probation recommended that the district court impose a prison term, noting that Medford had an active bench warrant for a misdemeanor crime in another State. Before imposing sentence, the district court commented on the fact that Medford did not cooperate with the Division of Parole and Probation. The district court also noted that, even absent its doubts over whether Medford would register, it was concerned about Medford's "impact on the community." Accordingly, we conclude that the district court did not refuse to grant probation based on a mistake of fact and did not abuse its discretion at sentencing.

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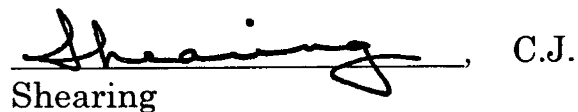
[5]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[6]See NRS 179D.550; NRS 193.130(2)(d) (providing for a prison term of 1 to 4 years).

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

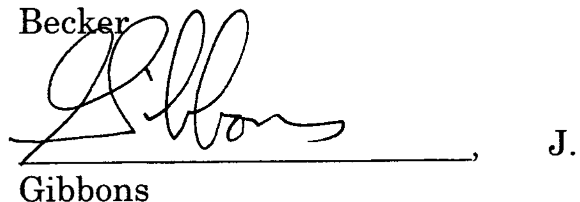
Having considered Meford's contentions and concluded that they are either inappropriate for review on direct appeal or lack merit, we

ORDER the judgment of conviction AFFIRMED.



_______________, C.J.
Shearing

_______________, J.
Becker



_______________, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk