

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL STEWART SPENCER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42152

FILED

FEB 18 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Riad*
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 abused its discretion at sentencing because the sentence is too harsh. Specifically, appellant argues that the district court should have taken into consideration the fact that appellant had a long history of substance abuse and had recently been diagnosed with mental health problems. We conclude that appellant's contention is without merit.

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

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


²Silks 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.³

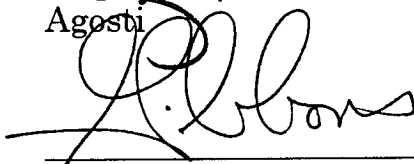
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁴

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

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

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 205.060(2).