IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN PAUL SUTTON, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 42208
BRIAN PAUL SUTTON, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 42209

FILED

FEB 18 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction pursuant to guilty pleas. In Docket No. 42208, appellant Brian Paul Sutton was convicted of one felony count of being an ex-felon in possession of a firearm and one gross misdemeanor count of assault upon a police officer. The district court sentenced Sutton to serve a prison term of 18 to 48 months for the possession count and a concurrent jail term of 12 months for the assault count. In Docket No. 42209, Sutton was convicted of two counts of possession of a stolen motor vehicle and one count of possession of a credit card without consent. The district court sentenced Sutton to serve two consecutive prison terms of 24 to 60 months for the counts involving the stolen motor vehicle and a concurrent prison term of 12 to 48 months for the count involving the credit card.

Sutton's sole contention is that the district court abused its discretion at sentencing because the sentences imposed are excessive. Sutton argues that the sentences are too harsh given that most of his prior crimes were "drug driven" offenses, he admitted that he needed help for

his drug addiction and, "drug treatment would be the better course for both Mr. Sutton and society as a whole." Relying on the dissent in Tanksley v. State,[1] Sutton asks this court to review the sentences to determine whether justice was done. We conclude that Sutton's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[2] 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."[3] "Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional."[4]

In the instant case, Sutton does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentences imposed were within the parameters provided by the relevant statutes.[5] Finally, the sentences imposed were not so unreasonably disproportionate

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[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

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

[3]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[4]Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995), abrogated on other grounds by Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000).

[5]See NRS 202.360(3); NRS 200.471(2)(a); NRS 205.273(3); NRS 193.130(2)(c); NRS 205.690(1); NRS 193.130(2)(d).

to the crimes as to shock the conscience. Accordingly, the district court did not abuse its discretion at sentencing.

Having considered Sutton's contentions and concluded that they lack merit, we

ORDER the judgments of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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