

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLA MACK SCHARBACH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51823

FILED

JAN 22 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of felony driving under the influence (DUI). Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Carla Mack Scharbach to serve a prison term of 28 to 72 months and ordered her to pay a \$2,000 fine.

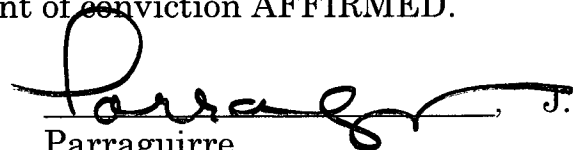
Scharbach contends that the district court abused its discretion by sentencing her to prison instead of granting her application for treatment under NRS 484.37941. Scharbach claims that she met the criteria set forth in the statute and she argues that the district court's decision to deny her application exceeded the bounds of law because it was not based upon the criteria established in the statute. Scharbach cites to Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001), for the proposition that "[a]n abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason."

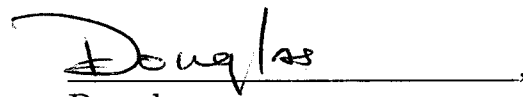
"[T]he provisions set forth in NRS 484.37941 . . . merely give the district court discretion to allow a defendant to complete a treatment program in order to obtain a conviction and sentence for a lesser offense,"

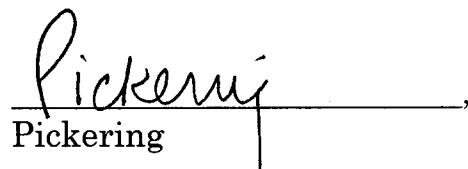
they do not require the district court to grant a defendant's application for treatment. Picetti v. State, 124 Nev. ___, ___, 192 P.3d 704, 712 (2008). Further, we have consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). We 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. Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Scharbach's application for treatment was decided during her sentencing hearing. The district court was informed that this was Scharbach's fourth DUI conviction, she had other non-DUI convictions, and she had previously "completed a 30-day residential program with Northstar but failed to complete counseling due to a DUI." The district court determined that Scharbach posed a threat to the welfare and safety of the people that she encountered on the street while drinking and driving. The district court denied Scharbach's application for treatment and sentenced her to a term of imprisonment pursuant to NRS 484.3792(1)(c). We conclude that the district court did not abuse its discretion, and we

ORDER the judgment of conviction AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Robert H. Perry, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk