

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JAMES CELAYA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55022

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted battery by a prisoner in lawful custody. First Judicial District Court, Carson City; Noel E. Manoukian, Judge.

Appellant Michael James Celaya contends that the district court abused its discretion at sentencing by imposing a prison term rather than probation. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Celaya has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. See Denson v. State, 112 Nev. 489, 492-93, 915 P.2d 284, 286-87 (1996); see also Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). Further, the granting of probation is discretionary and Celaya's sentence falls within the parameters provided

by the relevant statutes. See NRS 176A.100(1)(c); NRS 193.330(1)(a)(3); NRS 200.481(2)(f). Therefore, we conclude that the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Chief Judge, First Judicial District  
Hon. Noel E. Manoukian, Senior Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City Clerk