## IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JAMES CELAYA, Appellant, vs. No. 55022

vs. THE STATE OF NEVADA, Respondent.

JUN 0 9 2010

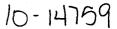


## **ORDER OF AFFIRMANCE**

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. <u>Randell v. State</u>, 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. <u>See Denson v. State</u>, 112 Nev. 489, 492-93, 915 P.2d 284, 286-87 (1996); <u>see also Allred v. State</u>, 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

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by the relevant statutes. <u>See</u> 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.

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

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