


IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN TODD PIERCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56699

FILED

DEC 10 2010

TRACHE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of unlawful possession of a controlled substance for the purpose of sale. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

Appellant Brian Todd Pierce contends that the district court abused its discretion by ignoring the Division of Parole and Probation's sentencing recommendation. Pierce has not shown that the district court relied on impalpable or highly suspect evidence, see Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976), or that the relevant statutes are unconstitutional, see Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). We note that the 12- to 48-month sentence falls within the parameters of the relevant statutes, see NRS 193.130(2)(d); NRS 453.337(2)(a), and the granting of probation is discretionary, see NRS 176A.100(1)(c). And we conclude that the district court did not abuse its

discretion at sentencing. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Attorney General/Carson City
Elko County District Attorney
Lockie & Macfarlan, Ltd.
Elko County Clerk