

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOBY JOHN RUSSELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35688

**FILED**

MAY 10 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of statutory sexual seduction. The district court sentenced appellant to twelve (12) to forty-eight (48) months in the Nevada State Prison.

Appellant's sole contention is that the district court abused its discretion by refusing to grant probation. We conclude appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). 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. . . ." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, "a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional." Griego v. State, 111 Nev. 444, 447, 893 P.2d 995, 997-98 (1995) (citing Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978)).

In the instant case, appellant does not allege the district court relied on impalpable or highly suspect evidence

or that the relevant statute is unconstitutional. Further, we note the sentence imposed is within the parameters provided by the relevant statutes. See NRS 200.368; NRS 193.130(2)(c). Moreover, the granting of probation is discretionary. See NRS 176A.100(1)(b).

Having considered appellant's contention and concluded that it is without merit, we

ORDER this appeal dismissed.

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.

cc: Hon. Michael E. Fondi, District Judge  
Attorney General  
Carson City District Attorney  
State Public Defender  
Carson City Clerk