

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON A. SWETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86672-COA

FILED

JAN 25 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jason A. Swett appeals from a judgment of conviction, entered pursuant to a guilty plea, of possession of a controlled substance, third or subsequent offense. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Swett argues that the district court abused its discretion by sentencing him to a prison term rather than granting him probation and requiring him to complete a drug court program as jointly recommended by the parties. The granting of probation is discretionary. *See* NRS 176A.100(1)(c); *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence . . .”). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes “[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); *see Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).


Swett argues the district court relied on impalpable or highly suspect evidence in denying him probation when it considered DUI school


and counseling as evidence that he previously had a meaningful opportunity at drug treatment akin to participation in a drug court program. At the sentencing hearing, Swett conceded that he had previously completed DUI school and that he had received counseling as a result of a prior conviction for possession of methamphetamine. The district court did not indicate that it viewed DUI school and Swett's prior counseling as analogous to treatment in a drug court program or that such a view informed its sentencing decision. Rather, the district court indicated that its sentencing decision was a result of Swett's criminal history, which included six prior felony convictions. Therefore, Swett fails to demonstrate the district court relied upon impalpable or highly suspect evidence in denying him probation.

Moreover, Swett's sentence of 12 to 30 months in prison is within the parameters provided by the relevant statutes, *see* NRS 193.130(2)(d); NRS 453.336(2)(b) (2021), and the district court was not obligated to accept the parties' sentencing recommendation, *see Sandy v. Fifth Judicial Dist. Court*, 113 Nev. 435, 440 n.1, 935 P.2d 1148, 1151 n.1 (1997). Having considered the sentence and the crime, we conclude the district court did not abuse its discretion by declining to suspend the sentence and place Swett on probation. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Thomas W. Gregory, District Judge
Morton Law, PLLC
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk