

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39777

FILED

OCT 01 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of assault with a deadly weapon. The district court sentenced appellant Christopher Brown to a term of 12 to 48 months in the Nevada State Prison.

Brown's sole contention is that the district court abused its discretion by refusing to grant probation. Brown argues that the dissent in this court's Tanksley¹ case supports his claim that this court should remand his case for resentencing to include a probationary term. Brown notes that like Mr. Tanksley, he suffers from mental problems. These problems apparently trigger criminal behavior when Brown is not taking his medications regularly. Although we are sympathetic to Brown's problems, we conclude that his contention is without merit.

¹Tanksley v. State, 113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

This court has consistently afforded the district court wide discretion in its sentencing decision.² 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."³ Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience.⁴

In the instant case, Brown does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statute.⁵ Moreover, the granting of probation is discretionary.⁶ We also note that the district court granted a continuance of Brown's sentence hearing for a psychological evaluation and for a determination of whether he was eligible for mental

²See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

⁵See NRS 200.471(2)(b).


⁶See NRS 176A.100(1)(c).


health court. At the continued sentencing hearing, the district court sentenced Brown to a prison term because he was not eligible for mental health court and because he had prior convictions for violent crimes. We conclude that the district court did not abuse its discretion.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk