IN THE SUPREME COURT OF THE STATE OF NEVADA

HUGO APARICIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43014

FILED

SEP 15 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant to two consecutive prison terms of 48 to 180 months with equal and consecutive prison terms for the use of a deadly weapon.

Appellant first contends that the district court should have allowed him to withdraw his guilty plea. However, this court

> no longer permit[s] a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding.[1]

Although appellant expressed a desire to withdraw his guilty plea after the judgment of conviction was entered, no such motion was actually filed.

[1]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

We therefore conclude that this issue is not appropriate for review on direct appeal.

Appellant next contends that the district court abused its discretion at sentencing because the sentence is too harsh. We conclude that appellant's contention is without merit.

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, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[5]

---

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

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

[4]Blume 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)).

[5]See NRS 200.380(2); NRS 193.165(1).

Having considered appellant's contentions and concluded that they are either not appropriate for review on direct appeal or without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk