

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUANE WILSON JAMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43246

FILED

SEP 27 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Duane Wilson James to serve a prison term of 24-60 months and ordered him to pay \$1,049.00 in restitution.

James' sole contention on appeal is that the district court abused its discretion at sentencing. James argues that a term of probation would be more appropriate than a prison term so he could "recover" from his drug addictions, and that instead, the district court failed to exercise any discretion and merely followed the sentencing recommendation offered by the Division of Parole and Probation and the prosecutor. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, James contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that James' contention is without merit.

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

²107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ The district court's discretion, however, is not limitless.⁵ Nevertheless, we 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."⁶ Despite its severity, 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 to the crime as to shock the conscience.⁷

In the instant case, James does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

³Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁴Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

⁷Blume 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)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

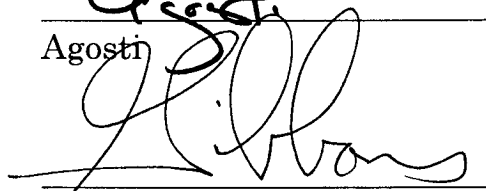
statutes.⁸ Prior to imposing a sentence, the district court heard from the prosecutor, who provided details of James' violent offense, and a statement from James. James concedes that he has "a long history of drug related offenses." Additionally, we note that the granting of probation is discretionary.⁹ Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Accordingly, having considered James' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.¹⁰


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁸See NRS 200.481(2)(b); NRS 193.130(2)(c) (category C felony punishable by a prison term of 1-5 years).

⁹See NRS 176A.100(1)(c).

¹⁰Because James is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to James unfiled all proper person documents he has submitted to this court in this matter.

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk