IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43247

FILED

APR 04 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of kidnapping and three counts of sexual assault on a child. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

The district court sentenced appellant Michael Botelho to a prison term of life with the possibility of parole for kidnapping and prison terms of life with the possibility of parole for each count of sexual assault. The terms for two counts of sexual assault were imposed to run concurrently to one another and consecutively to the term for kidnapping. The term for the remaining count of sexual assault was imposed to run consecutively to the two concurrent terms for sexual assault.

Botelho cites to the dissent in Tanksley v. State[1] and asks this court to review his sentence to see if justice was done. He claims that the sexual assaults that he perpetrated on the victim were a continuous act and were completed in a matter of minutes.[2] He contends that the district

[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]Botelho cites Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 285-86 (2004), in which we concluded that Crowley's convictions for sexual

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court should have imposed concurrent sentences to reflect the uninterrupted nature of his assault. And he argues that this court should ensure that the punishment fits the crime.

We have consistently afforded the district court wide discretion in its sentencing decisions, and we have refrained from interfering with the sentence imposed when "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] Regardless of 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.[4]

Botelho does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. The sentences imposed were within the parameters provided by the relevant statutes.[5] And the sentences were not so unreasonably disproportionate to the crimes as to shock the conscience. Botelho admitted to kidnapping the 14-year-old victim and perpetrating three distinct acts of sexual assault upon her: forcing her to perform

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. . . continued

assault and lewdness with a minor were redundant because Crowley's actions were uninterrupted: "Crowley's act of rubbing the male victim's penis on the outside of his pants was a prelude to touching the victim's penis inside his underwear and the fellatio."

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

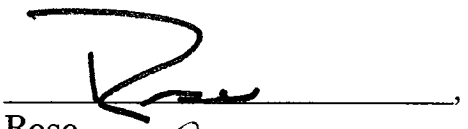
[4]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

[5]See NRS 200.310(1); NRS 200.320(2)(a); NRS 200.366(3)(b)(1).

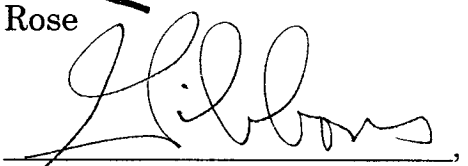
fellatio on him, subjecting her to cunnilingus, and subjecting her to vaginal intercourse. Contrary to Botelho's assertion, his sexual assaults were not one continuous act, and the district court was not required to treat them as one at sentencing.[6] Accordingly, we conclude that the district court did not abuse its discretion when sentencing Botelho.

Having considered Botelho's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Gibbons

_____, J.
Hardesty

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

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[6]See Deeds v. State, 97 Nev. 216, 217, 626 P.2d 271, 272 (1981) ("The great weight of authority supports the proposition that separate and distinct acts of sexual assault committed as a part of a single criminal encounter may be charged as separate counts and convictions entered thereon."); see also Peck v. State, 116 Nev. 840, 848, 7 P.3d 470, 475 (2000).