IN THE SUPREME COURT OF THE STATE OF NEVADA

EBONY B. DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43289

FILED

SEP 29 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 one count of possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant Ebony B. Davis to serve a prison term of 26-72 months, to run concurrently with the sentence imposed in district court case no. C196591, and ordered him to pay $200.00 in restitution.

First, Davis contends that the sentence constitutes cruel and unusual punishment because the sentence imposed is disproportionate to the crime.[1] The extent of Davis' argument, without support, is that "as a matter of law, the maximum sentence imposed below was so 'shocking to the conscience' as to be in violation of the Constitution's Eighth Amendment." We disagree with Davis' contention.

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

[1]Davis primarily relies on Solem v. Helm, 463 U.S. 277 (1983); see also U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

crime.[2] This court has consistently afforded the district court wide discretion in its sentencing decision.[3] The district court's discretion, however, is not limitless.[4] 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."[5] 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.[6]

In the instant case, Davis does not allege that the district court relied only on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Davis, in fact, has not provided any argument in support of his contention that his sentence was cruel and unusual punishment.[7] We further note that: (1) the sentence

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

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

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

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

[6]Allred v. State, 120 Nev. ___, ___, 92 P.3d 1246, 1253 (2004).

[7]See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

imposed was within the parameters provided by the relevant statute;[8] (2) Davis' significant criminal history included multiple felony convictions and revoked terms of probation and parole; and (3) in exchange for his guilty plea, the State agreed not to oppose a sentence concurrent to that imposed in another case. Therefore, we conclude that the district court did not abuse its discretion at sentencing, and that the sentence imposed does not constitute cruel and unusual punishment.

Finally, without argument or support, Davis states that his guilty plea was not entered intelligently or knowingly because "he was not adequately made aware of the complete consequences of his plea." Davis seems to be under the misconception that "concurrent" means "equal," and therefore, the maximum sentence imposed in the instant case could not be greater than that imposed in district court case no. C196591. In district court case no. C196591, Davis pleaded guilty to one count of grand larceny and was sentenced to serve a prison term of 12-48 months.

This court has held that, generally, challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34.[9] Because Davis has not challenged the validity of his guilty plea in the district court, his claim is not appropriate for review on direct appeal from the judgment of

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[8]See NRS 202.360(1) (category B felony punishable by 1-6 year prison term).

[9]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989), modified in part on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2002).

conviction.[10] Further, this court will generally not consider claims of ineffective assistance of counsel on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in an evidentiary hearing.[11] We conclude that Davis has failed to provide this court with any reason to depart from this policy in his case.[12]

Having considered Davis' contentions and concluded that they are either without merit or not appropriately raised in a direct appeal, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

cc: Hon. John S. McGroarty, 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

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[10]Bryant, 102 Nev. at 272, 721 P.2d at 368.

[11]See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

[12]See id. at 160-61, 17 P.3d at 1013-14.