

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ALLEN ROWE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43334

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 use of a minor in the production of pornography. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant James Allen Rowe to serve a prison term of 60-180 months and ordered him to pay a fine of \$2,000.00.

Rowe was initially arrested and charged by way of a criminal complaint with five counts of use of a minor in the production of pornography and five counts of possession of visual presentation depicting sexual conduct of a person under the age of 14 years. The charges stemmed from the discovery by Rowe's girlfriend of five graphic photographs of her granddaughter, who was 3 years old at the time the photos were taken.

Rowe's sole contention on appeal is that the district court abused its discretion at sentencing. Rowe argues that his sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence imposed is disproportionate to the crime.¹ In support of his claim, Rowe notes that: (1) he does not have a criminal history; (2) the psychosexual evaluator

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

classified him as a low risk to reoffend and considered him a good candidate for community supervision; (3) he was not involved in the production of pornography for sale and he never purchased pornography; and finally, (4) a term of probation would be more appropriate than a prison sentence. We disagree with Rowe's 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 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, Rowe does not allege that the district court relied only on impalpable or highly suspect evidence or that the relevant

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

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

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

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


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

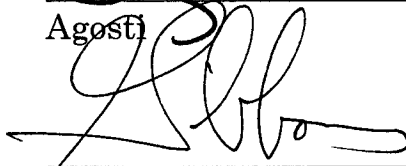
sentencing statutes are unconstitutional. In fact, Rowe concedes that the sentence imposed was within the parameters provided by the relevant statutes.⁷ Additionally, the granting of probation is discretionary.⁸ Further, we note that in exchange for his guilty plea, Rowe received a substantial benefit – for his criminal actions, Rowe was facing the possibility of multiple terms of life imprisonment, and instead, the State agreed to drop 9 additional counts and asked the district court to impose only a 5-15 year prison sentence. Therefore, based on all of the above, 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.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁷See NRS 200.700; NRS 200.710(1); NRS 200.750(1)(b) (category A felony punishable by a prison term of 5-15 years).

⁸See NRS 176A.100(1)(c).

cc: Hon. Valorie Vega, 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