

IN THE SUPREME COURT OF THE STATE OF NEVADA


PAUL ELLIOTT BURNEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43522

FILED

MAR 16 2005

ORDER OF AFFIRMANCE

ANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of second-degree kidnapping and one count of attempted sexual assault. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant to a prison term of 48 to 120 months for kidnapping, and a consecutive prison term of 48 to 180 months for attempted sexual assault.

Appellant contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime. We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.¹ Regardless of its severity, a

¹Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."²

This court has consistently afforded the district court wide discretion in its sentencing decision.³ 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."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 Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

²Blume 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).

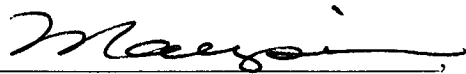
³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

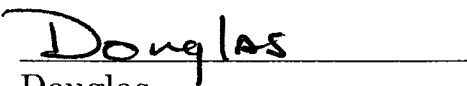
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁵See NRS 200.330; NRS 200.366(2); 193.330(1)(a)(1).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Jackie Glass, District Judge
Benson & Bingham
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk