IN THE SUPREME COURT OF THE STATE OF NEVADA

DELBERT M. GREENE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43628

FILED

AUG 24 2005

CLERK OF SUPREME COURT
BY J. Rinaldi
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a jury verdict, of one count each of burglary while in the possession of a deadly weapon (count I), conspiracy to commit robbery (count II), and robbery with the use of a deadly weapon (count III). Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The district court orally sentenced appellant Delbert M. Greene, on September 9, 2003, to serve a prison term of 36-156 months for count I, a consecutive prison term of 18-60 months for count II, and a prison term of 48-180 months plus an equal and consecutive term for the deadly weapon enhancement for count III; the district court ordered count III "to run concurrently with count I and consecutively to Count II." Greene was also ordered to pay $996.00 in restitution jointly and severally with his accomplice. The formal judgment of conviction was entered on October 3, 2003, and once again ordered the sentence imposed for count III to run concurrently with count I and consecutively to count II. Additionally, the judgment of conviction failed to reference the equal and consecutive sentence imposed for the deadly weapon enhancement.

05-16726

In Greene's direct appeal, we concluded that the district court erred in sentencing Greene in two ways: (1) the sentence for count III cannot run concurrently with count I and consecutively to count II when the sentence imposed for count II was ordered to run consecutively to count I; and (2) as noted, there is no mention of the deadly weapon enhancement imposed for count III.[1] Therefore, we affirmed the judgment of conviction and rejected Greene's contentions, but remanded the case back to the district court for a new sentencing hearing.[2] On July 15, 2004, the district court entered an amended judgment of conviction. The district court sentenced Greene to serve a prison term of 36-156 months for count I, a consecutive prison term of 18-60 months for count II, and two consecutive prison terms of 48-180 months for count III. Greene has now filed a timely appeal challenging the amended judgment of conviction and sentence.

First, Greene raises issues pertaining to evidence offered by the State and admitted at trial. These arguments are not properly raised in an appeal from an amended judgment of conviction; Greene may only raise issues related to the new sentencing hearing. Moreover, Greene raised the same arguments pertaining to the admissibility of the evidence in his direct appeal, and this court rejected his contentions. The doctrine

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[1]Greene v. State, Docket No. 42110 (Order Affirming in Part and Remanding, May 18, 2004).

[2]Id.

of the law of the case prevents further litigation of these issues and "cannot be avoided by a more detailed and precisely focused argument."[3]

Second, Greene contends that the district court abused its discretion at the sentencing hearing on remand. Specifically, Greene argues that the sentence imposed was excessive and disproportionate to the crime. Greene claims that the district court disregarded his "minimal" involvement in the crime and merely followed the sentencing recommendation of the Division of Parole and Probation "without any apparent consideration of the factors that militated any imposition of a lesser, or perhaps concurrent, sentence." Citing to the dissents in Tanksley v. State[4] and Sims v. State[5] for support, Greene argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Greene's contention is without merit.

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.[6] This court has consistently afforded the district court wide

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[3]Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

[4]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

[5]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

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

discretion in its sentencing decision.[7] The district court's discretion, however, is not limitless.[8] 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."[9] 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.[10]

In the instant case, Greene 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 statutes.[11] Further, Greene has an extensive criminal history, including multiple felony convictions in three different states. Finally, we note that

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

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

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

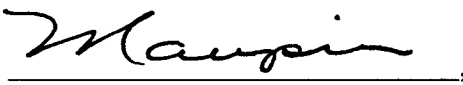
[10]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[11]See NRS 205.060(4) (category B felony punishable by a prison term of 2-15 years); NRS 193.165; NRS 199.480(1)(a) (category B felony punishable by a prison term of 1-6 years); NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years).

it is within the discretion of the district court to grant probation[12] and/or impose consecutive sentences.[13] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Greene's contentions and concluded that they are either not properly raised or without merit, we

ORDER the amended judgment of conviction AFFIRMED.[14]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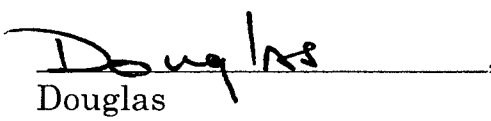
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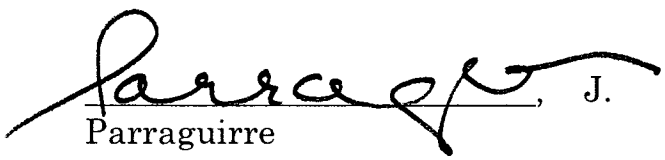
, J.
Parraguirre

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[12]See NRS 176A.100(1)(c).

[13]See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

[14]In its fast track response, the State cites to the transcript of the sentencing hearing on remand. Neither party has provided this court with a copy of the transcript of the sentencing hearing. We remind respondent that Nevada Rule of Appellate Procedure 3C(j)(2) states that if a party's brief cites to documents not previously filed in this court, the party must file and serve an appropriately documented supplemental appendix with the brief.

cc: Hon. Valerie Adair, District Judge
Robert L. Langford & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk