

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ROBERT PERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43668

FILED

DEC 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of robbery with the use of a firearm. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant to two consecutive prison terms of 40 to 180 months with equal and consecutive terms for the use of a firearm.

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. Appellant also contends that the district court abused its discretion at sentencing by imposing consecutive sentences. 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 sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or

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

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. Moreover, it is within the district court's discretion to impose consecutive sentences.⁶

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 200.380(2); NRS 193.165(1).


⁶See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Dennis A. Cameron
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk