IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD H. DESANTIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43705

FILED

FEB 04 2005

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 four counts of sale of a controlled substance. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant to four prison terms of 24 to 60 months, and ordered that three of the terms run concurrently, and one run consecutively. The district court further ordered that appellant pay a fine of $5,000.00 for each count, and an additional donation of $5,000.00 to the State of Nevada, for a total of $25,000.00.

Appellant was sentenced on August 27, 2003. On September 3, 2003, this court received the original notice of appeal, because appellant had mailed the notice of appeal to this court, rather than filing it in the district court. According to our usual practice, this court transmitted the notice of appeal to the district court clerk and directed her to file the notice of appeal as of the date it was received in this court. The judgment of conviction was entered on September 4, 2003, and on September 22, 2003, appellant filed a motion to modify his sentence. The district court denied the motion.

Appellant's first contention on appeal is that the district court erred by denying his motion to modify his sentence. This is, however, an appeal from the judgment of conviction, and this court does not have jurisdiction to entertain an appeal from the order denying the motion to modify, because appellant did not file a notice of appeal from that order.[1]

Appellant next 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.[2] 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.[3] 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 the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[4]

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[1]See Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992) ("a motion to modify a sentence is the functional equivalent of a motion for a new trial," and an order denying such a motion is appealable).

[2]Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

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

[4]Blume 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

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This court has consistently afforded the district court wide discretion in its sentencing decision.[5] 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."[6]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[7] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Finally, appellant contends that he was entrapped. However, by pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea.[8] The issue was therefore not preserved for appeal, and was waived.

. . . *continued*
(1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

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

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

[7]See NRS 453.321(2)(a).

[8]See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

Having considered appellant's contentions and concluded that they are either not appropriately raised in this appeal or without merit, we

ORDER the judgment of conviction AFFIRMED.[9]

_____, C.J.
Becker

_____, J.
Rose

_____, J.
Hardesty

cc: Hon. Sally L. Loehrer, 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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[9]Because appellant is represented by counsel in this matter, we decline to grant appellant permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to appellant unfiled all proper person documents appellant has submitted to this court in this matter.