IN THE SUPREME COURT OF THE STATE OF NEVADA

IRAKLI PEIKRISHVILI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43758

FILED

MAY 0 4 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 one count of attempted grand larceny. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Irakli Peikrishvili to a prison term of 12-48 months, suspended execution of the sentence, and placed him on probation for an indeterminate period of time not to exceed five years. The district court also ordered Peikrishvili to pay $5,625.60 in restitution and $1,106.84 in extradition fees. Peikrishvili was initially charged by way of a criminal complaint with two counts of burglary, four counts of grand larceny, and one count of conspiracy to commit grand larceny.

First, Peikrishvili contends that he received ineffective assistance of counsel at sentencing. Peikrishvili argues that his counsel failed to investigate and inform the district court about the "severe consequences" of a felony conviction, specifically, that he would be deported. This court has repeatedly stated that, generally, claims of ineffective assistance of counsel will not be considered on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in

an evidentiary hearing.[1] We conclude that Peikrishvili has failed to provide this court with any reason to depart from this policy in his case.[2]

Second, Peikrishvili contends that the district court abused its discretion at sentencing. Peikrishvili argues that the district court "strongly relied" on "erroneous material facts," specifically, that he failed to appear for his presentence interview with the Division of Parole and Probation. Peikrishvili seems to imply that he would have been sentenced for a gross misdemeanor rather than a felony had the district court been accurately informed about: (1) the fact that he did interview with the Division; and (2) the deportation consequences of a felony conviction. We disagree with Peikrishvili's contention.

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

---

[1]See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

[2]See id. at 160-61, 17 P.3d at 1013-14.

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

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

[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[6]

Initially, to the extent that Peikrishvili is arguing that his counsel was ineffective, we once again note that the issue is not properly raised in direct appeal.[7] Further, Peikrishvili cannot demonstrate that the district court relied on impalpable or highly suspect evidence, and he does not allege 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.[8] At the sentencing hearing, after the State argued for a term of incarceration and claimed that Peikrishvili failed to appear for his presentence interview with the Division, Peikrishvili presented documentation that he did, in fact, appear and interview, although not with the Division representative who completed and signed the PSI. The PSI indicated that Peikrishvili had previously been convicted of a similar felony in the State of Washington. Upon questioning by the district court, defense counsel stated that he understood that there was a chance that Peikrishvili would be deported, but he was "not aware of any action that has been taken by the

---

[6]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 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

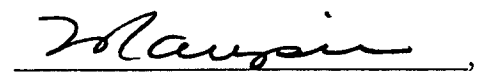
[7]See Johnson, 117 Nev. at 160-61, 17 P.3d at 1013.

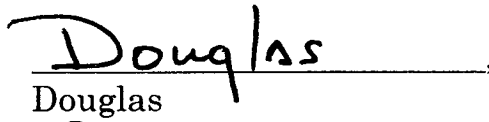
[8]See NRS 205.222(2); NRS 193.330(1)(a)(4) (attempt to commit a category C felony punishable as either a category D felony or gross misdemeanor); NRS 193.130(3)(d) (category D felony punishable by a prison term of 1-4 years).

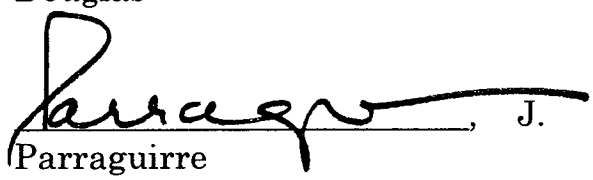
Department of Immigration."[9] Defense counsel then asked the district court to treat the matter as a gross misdemeanor. The district court then followed the recommendation of the Division and granted Peikrishvili probation. Accordingly, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Peikrishvili's contentions and concluded that they are either not properly raised on direct appeal or without merit, we

ORDER the judgment of conviction AFFIRMED.


, J.
Maupin


, J.
Douglas


, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Xavier Gonzales
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

---

[9]We do note, however, that the PSI states that "the Department of Homeland Security, United States Immigration and Custom Enforcement, Office of Investigation . . . will obtain conviction documents and start removal proceedings."