


IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO DUARTE A/K/A  
FRANCISO DUARTE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43979

FILED

FEB 15 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 failure to stop on the signal of a police officer. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Francisco Duarte to serve a prison term of 18 to 48 months.

Duarte 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.<sup>1</sup> In particular, Duarte contends that the sentence imposed is too harsh given the fact that the charged offense was non-violent and that he had only one prior misdemeanor conviction. We conclude that Duarte's contention lacks merit.

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.<sup>2</sup> Regardless of its severity, a

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<sup>1</sup>Duarte primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

<sup>2</sup>Harmelin 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."<sup>3</sup>

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> 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."<sup>5</sup>

In the instant case, Duarte does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>6</sup> Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. Although Duarte's criminal history was not extensive, the instant offense involved a high-speed police pursuit where Duarte drove, in a stolen vehicle, through several stop signs and refused to stop until police spiked the tires of the

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<sup>3</sup>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).

<sup>4</sup>See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

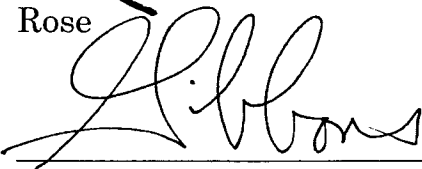
<sup>6</sup>See NRS 484.348(3)(b); NRS 193.330(1)(a)(3); NRS 193.130(2)(c) (providing for a prison sentence of 1 to 5 Years).


vehicle. After he was arrested, Duarte refused to cooperate with the police and was booked as a John Doe. In imposing sentence, the district court commented that it was "not at all impressed with the defendant's cooperation, what occurred in this instance." Accordingly, we conclude that the district court did not abuse its discretion at sentencing and that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

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