

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAIME PABLO JIMENEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44035

FILED

APR 19 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant's motion to modify his sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 10, 2004, appellant Jaime Pablo Jimenez was convicted, pursuant to a guilty plea, of four counts of robbery with the use of a deadly weapon and three counts of burglary while in possession of a deadly weapon. The district court sentenced Jimenez to serve four prison terms of 36 to 90 months for the robbery counts, with equal and consecutive terms for the use of the deadly weapon, and three prison terms of 24 to 60 months for the burglary counts. The district court ordered two of the burglary counts and one of the robbery counts to run consecutively and the remaining counts to run concurrently so that Jimenez would serve a minimum of 16 years in prison. Jimenez did not file an appeal from the judgment of conviction.

On June 2, 2004, Jimenez filed a motion to reconsider and modify the sentence arguing that the presentence investigation report was ambiguous and failed to consider mitigating factors. The State opposed the motion. The district court ordered the Division of Parole and Probation to complete a second presentence investigation report. After

hearing arguments from counsel, the district court denied the motion. Jimenez filed this timely appeal.

Jimenez argues that the district court abused its discretion in denying the motion to modify the sentence by failing to consider mitigating evidence and relying on a prejudicial presentence investigation report. In particular, Jimenez argues that the district court failed to consider mitigating evidence that: (1) Jimenez cooperated with law enforcement; (2) he had an abusive upbringing by an alcoholic father; (3) the gun used was unloaded; (4) none of the victims suffered any physical harm; and (5) the representative from the Division of Parole and Probation only interviewed him for five minutes. Additionally, Jimenez argues that the district court abused its discretion in denying the motion because the sentence imposed is too harsh given the facts of the case and the extent of his remorse. We conclude that Jimenez's arguments lack merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.¹ 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."² Moreover, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional,

¹See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

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

and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.³

In the instant case, Jimenez does not allege that the sentencing statutes are unconstitutional, and we note that the sentence imposed was within the parameters provided by the relevant statutes.⁴ Further, we disagree that the district court failed to consider mitigating evidence and note, that at the original sentencing hearing, defense counsel emphasized the mitigating factors in his argument requesting a lesser sentence. Also, in imposing sentence, the district court noted some of those mitigating factors, stating:

There is no prior record, no violence, per se, and he was candid with the police when questioned. [The prosecutor's] recommendation is certainly not unreasonable. However, I like to think I consider a factor of proportionality in these matters.

Frankly, [the prosecutor's recommendation of] 24 years as a minimum I might say to someone who is a little more violent or little more secretive in some of this behavior.

Finally, we note the sentence imposed is not disproportionate to the crime: Jimenez was originally charged with 7 counts of robbery with the use of a deadly weapon, three counts of burglary, and one count of grand larceny auto arising from four different armed robberies perpetrated on seven

³Blume 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)).

⁴See NRS 200.380(2) (providing for a prison sentence of 2 to 15 years); NRS 193.165(1); NRS 205.060(4) (providing for a prison sentence of 2 to 15 years).


victims. Although Jimenez had no prior criminal history, the sentencing court noted that the victims were terrorized when Jimenez held them up at gunpoint.

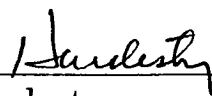
In considering Jimenez's motion to modify the sentence, the district court ordered the preparation of a second presentence investigation report and heard additional argument from counsel, and concluded that the sentence was not based on impalpable evidence. Accordingly, we conclude that the district court did not abuse its discretion in denying the motion to modify the sentence.

Having considered Jimenez's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁵Because Jimenez is represented by counsel in this matter, we decline to grant Jimenez permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Jimenez unfiled all proper person documents he has submitted to this court in this matter.

cc: Hon. Donald M. Mosley, District Judge
Jeffrey S. Posin & Associates
Jaime Pablo Jimenez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk