

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRIC T. BUTLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44107

FILED

APR 11 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony attempted malicious injury to a vehicle (count I) and gross misdemeanor battery on a police officer (count II). Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Darric T. Butler to serve a prison term of 12 to 36 months for count I and a concurrent jail term of 9 months for count II.

Butler 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. 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, Butler does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.⁵ Finally, we conclude that the sentence is not so disproportionate to the crime as to shock the conscience. Although Butler had a minimal criminal history, Butler kicked out the window of a police car and bit a police officer. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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).

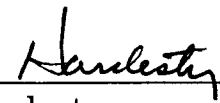
⁵See NRS 205.274(1); NRS 193.155(1); NRS 193.130; NRS 193.330(1)(a)(4); NRS 193.130(2)(d) (providing for a prison sentence of 1 to 4 years); NRS 200.481(2)(d); NRS 193.140 (providing for a jail term of not more than 1 year).

Having considered Butler's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Donald M. Mosley, 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