

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY LEGREG ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44156

FILED

JUN 02 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of robbery. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Anthony Legreg Ross to serve two concurrent prison terms of 24-120 months, and ordered him to pay restitution in the amount of \$190.84 jointly and severally with his codefendants and \$629.78 individually.

Ross's sole contention on appeal is that the district court abused its discretion at sentencing. Ross claims that the sentence imposed "was unfairly excessive" in light of the fact that he "was truly remorseful, wanted to stop his destructive life-cycle, wanted to work and be an asset to his family and society." Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Ross argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Ross's contention is without merit.

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

²107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ The district court's discretion, however, is not limitless.⁵ 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."⁶ Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁷

In the instant case, Ross does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

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

⁴Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).


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

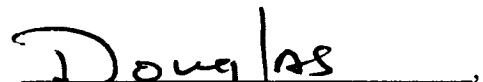
⁷Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

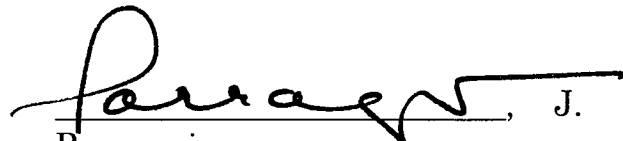
statute.⁸ At the sentencing hearing, Ross's counsel argued for probation, and alternatively, for a sentence below the statutory minimum. The State, pursuant to negotiations, concurred with the Division of Parole and Probation's recommendation of two concurrent prison terms of 24-120 months, and agreed not to file additional charges; most significantly, the State agreed to drop the deadly weapon enhancements. The State and a representative from the Division also spoke about Ross's criminal history, which the State described as "[l]ots of offenses of violence, weapons, theft; all out of California." Finally, we note that the granting of probation is discretionary.⁹ Accordingly, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Therefore, having considered Ross's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

⁸See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years).

⁹See NRS 176A.100(1)(c).

cc: Hon. Steven R. Kosach, District Judge
Fran Peter Archuleta
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk