IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCIA WILKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44184

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 district court order revoking appellant's probation. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On January 6, 2003, appellant Marcia Wilks was convicted, pursuant to a guilty plea, of one count of obtaining and using the personal identification information of another. The district court sentenced Wilks to serve a prison term of 22 to 96 months but suspended execution of the sentence, placing her on probation for a time period not to exceed 3 years.

On September 28, 2004, the Division of Parole and Probation filed a violation report against Wilks. After conducting a hearing, the district court revoked Wilks' probation. The district court also modified the original sentence, ordering Wilks to serve a prison term of 15 to 80 months.

Wilks' sole contention on appeal is that the modified sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is disproportionate to the crime. In particular, Wilks notes that she did not physically injure the victim and successfully completed two years of probation prior to the revocation. We conclude that the district court did not abuse its discretion at sentencing.

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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 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, Wilks does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.[5]

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

[2]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).

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

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

[5]See NRS 205.463(1)(b) (providing for a prison sentence of 1 to 20 years).

Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. Wilks had a prior criminal history consisting of several misdemeanor theft offenses, and in the instant case, Wilks attempted to charge over $800.00 worth of goods using the department store credit card and identification of the victim. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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

ORDER the judgment of conviction AFFIRMED.

Maupin, J.

Douglas, J.

Parraguirre, J.

cc: Hon. Joseph T. Bonaventure, 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