

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK ALLEN SCHMIDT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44194

FILED

MAR 16 2005

BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of obtaining and/or using the personal identification information of another. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Frank Allen Schmidt to serve a prison term of 76-240 months and ordered him to pay \$8,143.46 in restitution.

Schmidt's sole contention on appeal is that the district court abused its discretion at sentencing. Schmidt claims that "[t]he best protection society could get" would be achieved if the district court suspended his sentence and placed him in "a strict, long term, in-patient treatment facility" so that he could resolve his significant substance abuse problems. Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Schmidt contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Schmidt's contention is without merit.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but

<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

<sup>2</sup>107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

forbids only an extreme sentence that is grossly disproportionate to the crime.<sup>3</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> The district court's discretion, however, is not limitless.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>

In the instant case, Schmidt 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 statute.<sup>8</sup> Further, in the guilty plea memorandum, Schmidt concedes that

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

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

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

<sup>6</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

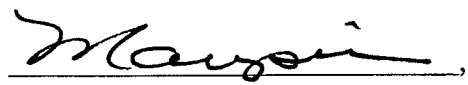
<sup>7</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

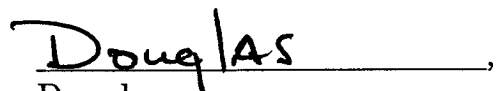
<sup>8</sup>See NRS 205.463(1) (category B felony punishable by a prison term of 1-20 years).

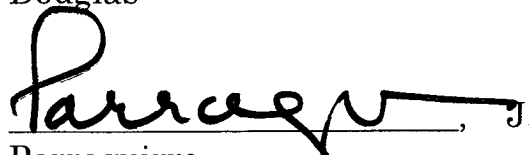
his criminal history is extensive. During the sentencing hearing, the prosecutor informed the district court that “the State is struck by how infrequently we see such devastation imposed by someone’s total lack of respect or regard for their victims,” and as a result, asked for the maximum sentence. In exchange for his guilty plea, Schmidt received a substantial benefit – the State agreed to drop three additional felony counts, including another count of obtaining and/or using the personal identification information of another, burglary, and uttering a forged instrument. The State also agreed not to pursue charges in at least ten other cases. And finally, we note that the granting of probation is discretionary.<sup>9</sup> Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Schmidt’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Maupin

 J.  
Douglas

 J.  
Parraguirre

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<sup>9</sup>See NRS 176A.100(1)(c).

cc: Hon. Brent T. Adams, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk