

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSVALDO NUNO-MORENO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44196

FILED

MAY 04 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 three counts of robbery. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Osvaldo Nuno-Moreno to serve one prison term of 26 to 96 months and two consecutive prison terms of 24 to 96 months.

Nuno-Moreno's sole contention is that the district court abused its discretion at sentencing. Specifically, Nuno-Moreno argues that the sentence imposed is too harsh given that he had a history of alcohol abuse and that his criminal history consisted of only a single misdemeanor DUI conviction. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Nuno-Moreno contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Nuno-Moreno's contention lacks 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).

This court has consistently afforded the district court wide discretion in its sentencing decision and 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.”³ Regardless of 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.⁴

In the instant case, Nuno-Moreno does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Moreover, the sentence imposed was within the parameters provided by the relevant statute.⁵ Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience. In imposing the sentence, the district court noted that the three victims in the case were terrorized when Nuno-Moreno went to their apartment, stole their property, and threatened them with a weapon. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

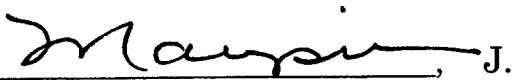
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

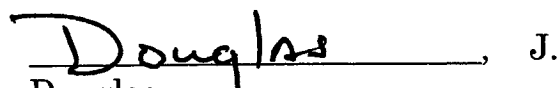
⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

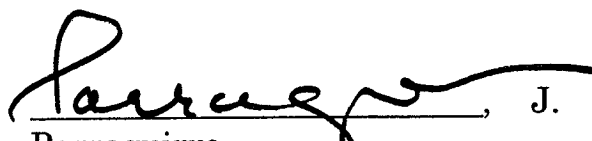
⁵See NRS 200.380(2) (providing for a prison sentence of 2 to 15 years).

Having considered Nuno-Moreno's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


Maupin


Douglas


Parraguirre

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