

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT D. BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44247

FILED

JUN 1 6 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 plea of nolo contendere,¹ of two counts of robbery. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant to a prison term of 26 to 80 months for each count and ordered that the terms run concurrently.

Appellant contends that the district court erred by denying his pre-sentencing motion to withdraw his guilty plea without appointing counsel to assist him with the motion. "A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason' if it is 'fair and just.'"² In considering whether a defendant has "advanced a substantial, fair, and just reason to withdraw a [guilty] plea, the district court must consider the totality of the

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

²Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."³

In this case, the district court found that appellant's plea was validly entered, based on the totality of the circumstances. We conclude that appellant has not demonstrated that the district court clearly abused its discretion.⁴

Appellant also contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions. 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.⁵ 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."⁶

³Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

⁴Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (holding that this court presumes that the lower court correctly assessed the validity of the plea, and that the lower court's determination will not be overturned absent a clear showing of an abuse of discretion).

⁵Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).


⁶Blume 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).

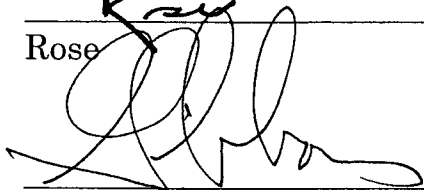
This court has consistently afforded the district court wide discretion in its sentencing decision.⁷ This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."⁸

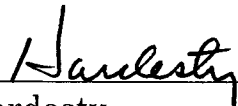
In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁹ Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁷See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁸Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

⁹See 200.380(2).

cc: Honorable Jackie Glass, 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