

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO DIEGO GALVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44267

FILED

APR 19 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 conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Mario Diego Galvez to serve a prison term of 12 to 60 months.

Galvez contends that the 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, Galvez contends that the sentence imposed is too harsh given the fact that "he had a real drug problem" and was "merely acting as a lookout while a friend committed robbery." We conclude that Galvez's contention lacks merit.

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

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

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, Galvez does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.⁵ Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. In imposing the sentence, the district court noted that, although Galvez had addressed his drug addiction, he had a significant criminal history dating back to 1980. Accordingly, we conclude that the district court did not abuse its discretion at sentencing and that the sentence imposed does not constitute cruel and unusual punishment.

²Blume 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).

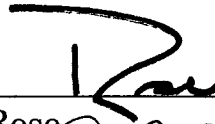
³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

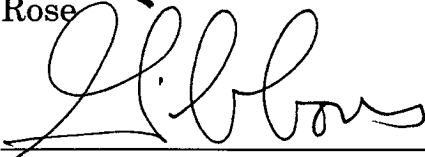
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

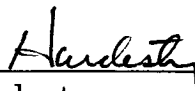
⁵See NRS 199.480(1)(A) (providing for a prison sentence of 1 to 6 years).

Having considered Galvez's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Mario Diego Galvez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk