IN THE SUPREME COURT OF THE STATE OF NEVADA

AUGUSTINE BRECEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44298

FILED

MAR 3 0 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of being a sex offender and providing false or misleading information and one count of failure to register as a sex offender. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Augustine Breceda to serve two concurrent prison terms of 12-34 months and ordered the sentence to run concurrently with the sentence imposed in district court case no. CR04-0465.

Breceda's sole contention on appeal is that the district court abused its discretion at sentencing. Breceda argues that there is no indication in the record that the district court considered the mitigating factors prior to imposing a sentence, including his cooperation with law enforcement officials and his "mental health problem." Breceda claims that "[t]he best protection society could get is a permanent positive resolution of [his] addiction and mental health problems, not merely a respite from it." Citing to the dissents in Tanksley v. State[1] and Sims v.

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

State[2] for support, Breceda contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Breceda's contention is without merit.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[3] This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] 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."[6] 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.[7]

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[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

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

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

[5]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

[6]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).

[7]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

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In the instant case, Breceda does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[8] At the sentencing hearing, defense counsel asked the district court to impose the sentence recommended by the Division of Parole and Probation, and the State concurred, making the same request and recommendation. Following the parties' wishes, the district court imposed the requested sentence. Additionally, we note that the State discussed Breceda's significant, "high-end" criminal history, including "[multiple] felony convictions in California arising out of five separate events and numerous misdemeanor convictions," and multiple revoked terms of probation and parole. The guilty plea memorandum signed by Breceda indicated that he had previously been convicted of possession of stolen property, escape with force or violence, receiving stolen property, being under the influence of a controlled substance, and having unlawful intercourse with a minor. And finally, in exchange for his guilty plea, Breceda received the following benefit: the State agreed to recommend that the prison terms imposed in the instant case run concurrently with all of the nine sentences imposed in district court case no. CR04-0465.

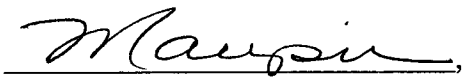
. . . *continued*
(1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[8]See NRS 179D.550(1), (3); NRS 193.130(2)(d) (category D felony punishable by prison term of 1-4 years).

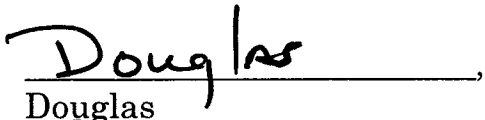
Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

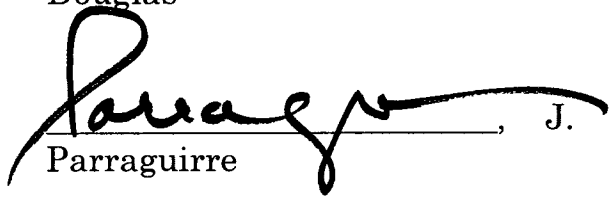
ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin



_____, J.
Douglas



_____, J.
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