IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBERT JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44301

FILED

MAR 0 8 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance for the purpose of sale. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Wilbert Jones to serve a prison term of 12-48 months

Jones' sole contention on appeal is that the district court abused its discretion at sentencing. Jones and his codefendant, with separate counsel, both asked the district court for a suspended sentence in order to enter the drug court program. Jones was ordered to serve a prison term while his codefendant was placed on probation. Jones claims that "[t]here was not much commentary at all and little explanation by anyone as to why this sentence was given." Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Jones contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Jones' contention is without merit.

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

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

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]

In the instant case, Jones 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

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[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).

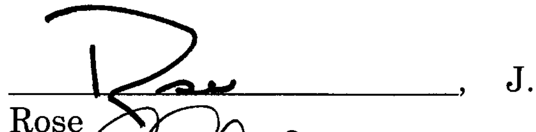
[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

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

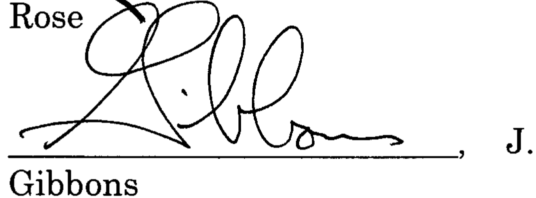
statutes.[8] Further, the written guilty plea agreement states that Jones has "multiple felony convictions," and the State opposed probation for Jones based on his criminal history. Additionally, we note that the granting of probation is discretionary.[9] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.



_______________, J.
Rose



_______________, J.
Gibbons

_______________, J.
Hardesty

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

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[8]See NRS 453.337(2)(a); NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years).

[9]See NRS 176A.100(1)(c).