

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD CARL MILES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44494

**FILED**

MAY 04 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of unlawful sale of a controlled substance. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Leonard Carl Miles to serve a prison term of 28-72 months.

Miles' sole contention on appeal is that the district court abused its discretion at sentencing by not granting him probation. Miles argues that "structured probation" with "several mandatory conditions" would be more appropriate and enable him to address his drug and mental health problems. Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Miles contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Miles' 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

---

<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

<sup>2</sup>107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

crime.<sup>3</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> The district court's discretion, however, is not limitless.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>

In the instant case, Miles does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute.<sup>8</sup> At the sentencing hearing, Miles' counsel argued for probation. The State, pursuant to negotiations, concurred with the Division of Parole

---

<sup>3</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>4</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>5</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>6</sup>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).

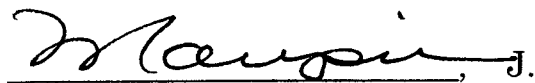
<sup>7</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

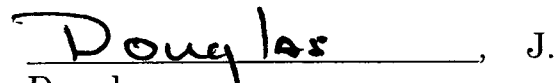
<sup>8</sup>See NRS 453.321(2)(a).

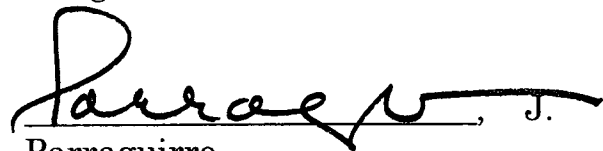
and Probation's recommendation of a prison term of 24-72 months, and agreed not to file additional charges. The State and a representative from the Division also spoke about Miles' criminal history, which included four felony convictions, and the nature of the instant offense. Finally, we note that the granting of probation is discretionary.<sup>9</sup> Accordingly, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

  
Maupin

  
Douglas

  
Parraguirre

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

---

<sup>9</sup>See NRS 176A.100(1)(c).