

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO P. MOGROS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44700

**FILED**

JUN 13 2005

ORDER OF AFFIRMANCE

BY *[Signature]*  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Antonio P. Mogros to serve a prison term of 26-120 months to run consecutively to the sentence imposed in district court case no. CR03-2591, and ordered him to pay \$2,762.64 in restitution jointly and severally with his codefendants.

First, Mogros contends that he is entitled to a new trial because of the conflicting evidence, specifically with regards to the identification evidence provided by the State's witnesses. Mogros points out that he is not arguing for an acquittal based on insufficient evidence, rather, he claims only that conflicting evidence requires a new trial. We disagree with Mogros' contention.

Initially, we note that Mogros did not file a motion for a new trial in the district court, as required by NRS 176.515.<sup>1</sup> Further, at trial,

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<sup>1</sup>NRS 176.515(4) provides that "[a] motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period."

although there were some inconsistencies in the testimony of the State's witnesses, the 60-year-old victim positively identified Mogros as the individual who violently robbed her of her purse. This court has repeatedly stated that it is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.<sup>2</sup> We also note that circumstantial evidence alone may sustain a conviction.<sup>3</sup> Accordingly, we conclude that Mogros has not demonstrated that he is entitled to a new trial based on conflicting evidence.

Second, Mogros contends that the district court abused its discretion at sentencing. Specifically, Mogros claims that the sentence imposed was unfairly excessive "due to the mitigating factors of [his] age, his record as a prisoner, and the fact that he was so close to successful parole on prior charges." Citing to the dissents in Tanksley v. State<sup>4</sup> and Sims v. State<sup>5</sup> for support, Mogros argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Mogros' 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

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<sup>2</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

<sup>3</sup>See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

<sup>4</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

<sup>5</sup>107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

crime.<sup>6</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>7</sup> The district court's discretion, however, is not limitless.<sup>8</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>9</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>10</sup>

In the instant case, Mogros 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>11</sup> At the sentencing hearing, defense counsel asked the district court to run the sentence concurrently with the sentence Mogros was already serving. The State argued for consecutive sentences because: (1) Mogros committed the instant offense "while he was FTA for sentencing"

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<sup>6</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>7</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>8</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>9</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

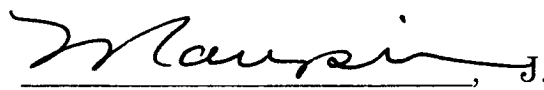
<sup>10</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

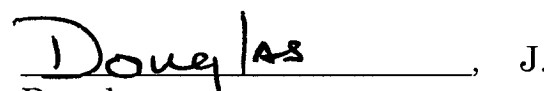
<sup>11</sup>See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years).

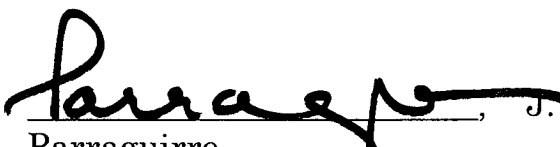
on another case; and (2) the victim suffered severe injuries. The State detailed the purse-snatching for the district court, and explained how when the victim reached into Mogros' vehicle and grabbed her purse in an attempt to retain the purse, Mogros "took off at high speed across the Shopko parking lot, dragging the 60-year-old victim alongside the vehicle." The State also read an impact letter provided by the victim which described the offense and the extent of her injuries, both mental and physical. Finally, we note that it is within the discretion of the district court to impose consecutive sentences.<sup>12</sup> Therefore, based on all of the above, we conclude that the district court did not abuse its discretion by imposing an excessive sentence.

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

ORDER the judgment of conviction AFFIRMED.

  
Maupin

  
Douglas

  
Parraguirre

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<sup>12</sup>See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

cc: Hon. Connie J. Steinheimer, District Judge  
John P. Calvert  
Jenny Hubach  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk