

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL GONZALEZ,  
Appellant  
vs.,  
THE STATE OF NEVADA,  
Respondent.

No. 44705

**FILED**

MAY 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 one count of attempted murder. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Manuel Gonzalez to serve a prison term of 24-60 months to run consecutively to the sentence imposed in district court case no. C200007.<sup>1</sup>

Gonzalez's sole contention is that the district court abused its discretion by imposing a sentence that amounts to cruel and unusual punishment after denying his proper person presentence motion to withdraw his guilty plea. We disagree.

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>1</sup>Gonzalez was initially charged by way of a criminal complaint with one count each of attempted murder with the use of a deadly weapon, assault with a deadly weapon, and discharging a firearm out of a motor vehicle. In district court case no. C200007, Gonzalez pleaded guilty to one count each of conspiracy to commit robbery and robbery with the use of a deadly weapon.

crime.<sup>2</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</sup> The district court's discretion, however, is not limitless.<sup>4</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>5</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>6</sup>

In the instant case, Gonzalez does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Gonzalez, in fact, has not provided any argument whatsoever in support of his contention that his sentence was cruel and unusual punishment.<sup>7</sup> Prior to the imposition of the sentence, the district court was informed about Gonzalez's criminal history and the nature of the instant offense, which included Gonzalez

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<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>3</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


<sup>6</sup>Allred v. State, 120 Nev. \_\_\_, \_\_\_, 92 P.3d 1246, 1253 (2004).


<sup>7</sup>See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").


firing at least three gunshots at the victim, his brother-in-law, hitting him in the back with two of them. We further note that the sentence imposed was not only within the parameters provided by the relevant statutes,<sup>8</sup> but that Gonzalez received the statutory minimum sentence for attempted murder. 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.<sup>9</sup>

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>See NRS 200.010; NRS 200.030; NRS 193.330(1)(a)(1) (attempt to commit category A felony punishable by prison term of 2-20 years).

<sup>9</sup>See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.