IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN SHEETS A/K/A IAN J. SHEETS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44872



ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to an Alford plea,[1] of one count of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Ian Sheets to serve a prison term of 24-120 months and ordered him to pay $3,443.00 in restitution. Sheets received credit for 545 days time served in presentence confinement.

Sheets' sole contention on appeal is that the district court abused its discretion at sentencing by not granting him probation. Sheets argues that probation would be more appropriate than a term of incarceration because between the time he entered his guilty plea and the sentencing hearing, after being released on his own recognizance to his mother in California, he became "approximately 65% recovered from his psychiatric disability, and [is] functioning semi-autonomously in a highly supervised psychiatric out-patient program, and making due progress in

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

re-entering society as a productive citizen." We disagree with Sheets' contention.

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.[2] This court has consistently afforded the district court wide discretion in its sentencing decision.[3] The district court's discretion, however, is not limitless.[4] 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."[5] 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.[6]

In the instant case, Sheets 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

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

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

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

[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[6]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

statute.[7] In exchange for the entry of Sheets' guilty plea, the State agreed to dismiss one count of attempted murder with the use of a deadly weapon and not to make a sentencing recommendation. We also note that the granting of probation is discretionary.[8] At the sentencing hearing, Sheets argued for probation, and on his behalf, the district court heard from a psychiatrist and Sheets' mother. The victim, and the victim's father, spoke about Sheets' unprovoked attack and the extent of his injuries from the stabbing. In imposing a sentence, the district court stated:

> I hate having to do this, but there's no way I can let this fellow get probation. I'm just not going to do it – not [with] what he's put this young man through.
>
> . . .
>
> [I]t's just a sad case. I mean, nobody wins in this case. . . . [W]e've got a mentally ill person that committed a violent crime on an innocent person, and whose family – he suffered, his family suffered, and now we must protect society.
>
> . . .
>
> But I also know that this young man [the victim] did nothing wrong. He got stabbed by someone who didn't take his medication.

Accordingly, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing by imposing a term of incarceration.

Having considered Sheets' contention and concluded that it is without merit, we affirm the judgment of conviction. Our review of the

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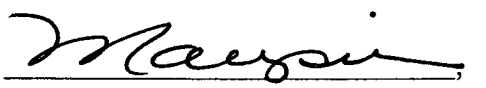
[7]See NRS 200.481(2)(e)(2) (category B felony punishable by a prison term of 2-15 years).

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

amended judgment of conviction, however, reveals a clerical error. The amended judgment of conviction incorrectly states that Sheets violated conditions of his probation, and therefore, pursuant to a probation violation proceeding, would subsequently be incarcerated. Our review of the record reveals that Sheets was never granted a term of probation by the district court. We therefore conclude that this matter should be remanded to the district court for the correction of the judgment of conviction. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


, J.
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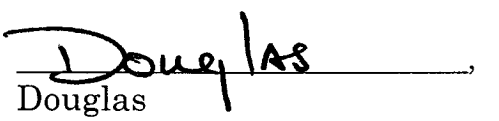
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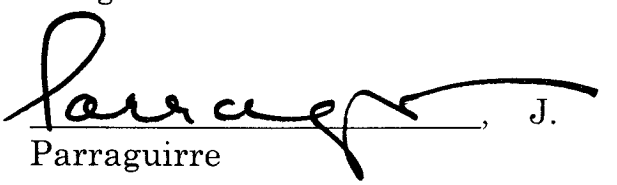
, J.
Parraguirre

cc: Hon. Michael A. Cherry, 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