

IN THE SUPREME COURT OF THE STATE OF NEVADA

CYNTHIA LEE VIGILANTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44905

FILED

DEC 12 2005

ORDER OF AFFIRMANCE

JANET E M BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of obtaining and/or using the personal identification information of another. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Cynthia Lee Vigilante to serve a prison term of 60-192 months and ordered her to pay a fine of \$5,000.00 and \$722.13 in restitution.

Vigilante's sole contention is that the district court abused its discretion at sentencing. Vigilante claims that "the problem with the record in terms of appellate review is that we know almost nothing about what the sentence imposed was based upon other than Judge Adams' observation of what the PSI contained." Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Vigilante argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Vigilante's contention is without merit.

¹113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

²107 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, Vigilante 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.⁸ We also note that in exchange for Vigilante's guilty plea, the

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

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

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

⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁷Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

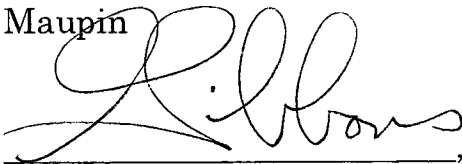
⁸See NRS 205.463(1) (category B felony punishable by a prison term of 1-20 years and a fine of not more than \$100,000.00).

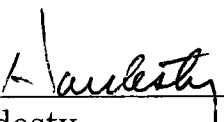
State agreed to concur with the sentencing recommendation of the Division of Parole and Probation, not seek habitual criminal adjudication, and not object to the sentence running concurrently with any other sentence already being served. Further, Vigilante has an extensive criminal history spanning many years. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Therefore, having considered Vigilante's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk