

IN THE SUPREME COURT OF THE STATE OF NEVADA

SILVERIO SALVATIERRA A/K/A
SILVERIO SAVATIERRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44945

FILED

AUG 18 2005

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY: *Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a document to establish false identity. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant Silverio Salvatierra to a prison term of 12 to 32 months, but then suspended execution of the sentence and placed him on probation for a time period not to exceed 12 months. As a condition of his probation, Salvatierra was ordered to serve 364 days in jail.

Salvatierra's sole contention on appeal is that the sentence imposed constitutes cruel and unusual punishment in violation of the United States Constitution.¹ Salvatierra argues that the condition of probation requiring him to spend 364 days in jail "shocks the conscience" given that he agreed to make restitution, and was merely using the social security number to work in the United States in order to support his family and not to obtain "credit or pleasures or booze." We conclude that Salvatierra's contention lacks merit.

¹See U.S. Const. amend. VIII.

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, Salvatierra does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed is within the parameters provided by the relevant statutes.⁷ In imposing sentence, the district court noted that it understood the reasons

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

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

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

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


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


⁷See NRS 205.465(3); 193.130(2)(e).

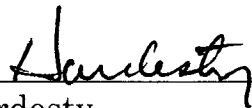
Salvatierra used the social security number, but that it was imposing jail time as a condition of probation because of the serious nature of the offense of identity theft. Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Salvatierra's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk