

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY JOHN HERGERT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44967

**FILED**

OCT 03 2005

ORDER OF AFFIRMANCE

JANEITE 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 gross misdemeanor stalking. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Jeffrey John Hergert to serve a jail term of one year.

Hergert's sole contention on appeal is that the district court abused its discretion at sentencing by refusing to grant probation. Hergert claims that the "better disposition" of his case would be structured probation where he could get mental health treatment and learn how "to adapt to the community in a productive way." Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Hergert contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Hergert's 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>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

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

crime.<sup>3</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> The district court's discretion, however, is not limitless.<sup>5</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>6</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>7</sup>

In the instant case, Hergert does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Moreover, we note that the sentence imposed by the district court was within the parameters provided by the relevant statutes,<sup>8</sup> and that the granting of probation is

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

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

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

<sup>6</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

<sup>7</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

<sup>8</sup>See NRS 200.575(1)(b); NRS 193.140 (providing for a jail term of not more than 1 year).

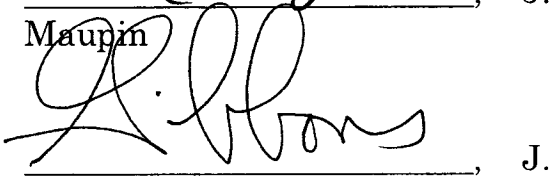
discretionary.<sup>9</sup> Although the district court imposed the maximum jail term permissible by statute, it noted that Hergert had previously been convicted of stalking another victim a short time before the instant offense. Moreover, prior to imposing sentence, the district court considered arguments from counsel, the victim's impact statement, and Hergert's statement of allocution. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

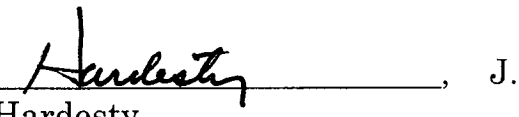
ORDER the judgment of conviction AFFIRMED.



Maupin



Gibbons



Hardesty

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

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<sup>9</sup>See NRS 176A.100(1)(c).