

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM DALE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44969

WILLIAM DALE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44970

FILED

OCT 03 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

These are appeals from judgments of conviction, pursuant to guilty pleas, of one count each of unlawful manufacture of a controlled substance and/or unlawful possession of the ingredients to manufacture a controlled substance (district court case no. CR04-0867) and unlawful possession of a chemical with the intent to manufacture or compound a controlled substance (district court case no. CR05-0018). Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant William Dale Johnson to serve two consecutive prison terms of 36-120 months. We elect to consolidate these appeals for disposition.¹

¹See NRAP 3(b).

Johnson contends that the district court abused its discretion at sentencing by not ordering the sentences to run concurrently. Johnson argues that the district court should have considered and acknowledged the “severe beating” he suffered while allegedly attempting to provide law enforcement officials with substantial assistance, and that because of the beating, he “already received a more cruel and unusual punishment than the State could legally inflict upon him.” Johnson also claims that he was only manufacturing methamphetamine for his own personal use. Citing to the dissents in Tanksley v. State² and Sims v. State³ for support, Johnson argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Johnson’s contentions are 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 crime.⁴ This court has consistently afforded the district court wide discretion in its sentencing decision.⁵ The district court’s discretion,

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

³107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

⁴Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁵Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

however, is not limitless.⁶ 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.”⁷ 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.⁸

In the instant case, Johnson 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.⁹ We also note that in exchange for his guilty pleas, the State agreed to dismiss one count of mid-level drug trafficking and additional charges in district court case no. CR04-0292. Further, Johnson has an extensive criminal history spanning many years, including multiple felony convictions. And finally, it is within the discretion of the district court to

⁶Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

⁷Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁸Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

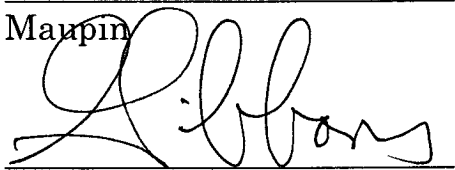
⁹See NRS 453.322(2) (category B felony punishable by a prison term of 3-15 years).


impose consecutive sentences.¹⁰ Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Johnson's contentions and concluded that they are without merit, we

ORDER the judgments of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

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

¹⁰See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).