

IN THE SUPREME COURT OF THE STATE OF NEVADA


GEORGE KIM MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45128

FILED

MAY 08 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, of one count of attempted robbery. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant George Kim Mitchell to serve a prison term of 48 to 120 months.

Mitchell contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is disproportionate to the crime. In particular, Mitchell contends that the sentence imposed is too harsh given the fact that he did not physically injure anyone and took responsibility for his actions. We conclude that Mitchell's contention lacks merit.

Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably

disproportionate to the offense as to shock the conscience."¹ This court has consistently afforded the district court wide discretion in its sentencing decision.² This court 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."³

In the instant case, Mitchell does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes,⁴ and the district court imposed the stipulated sentence agreed to by the parties pursuant to the plea negotiations. Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. The instant criminal offense arose when Mitchell attempted to steal personal property valuing approximately \$10,000.00 from the victim using threat of force. Accordingly, we conclude that the

¹Blume 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)).

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

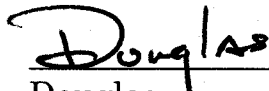
³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁴See NRS 200.380(2); 193.330(1)(a)(2) (providing for a prison sentence of 1 to 10 years).

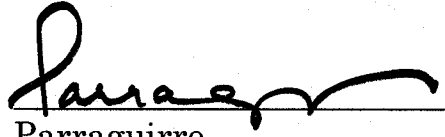
district court did not abuse its discretion at sentencing and that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Mitchell's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk