IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNON ROSHAWN WARE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45217

FILED

OCT 25 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order revoking appellant's probation. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 5, 2002, appellant Shannon Roshawn Ware was convicted, pursuant to a guilty plea, of one felony count of attempted theft. The district court sentenced Ware to a prison term of 18 to 48 months, but then suspended execution of the sentence and placed him on probation for a time period not to exceed 3 years.

On March 3, 2005, the State filed a notice of intent to seek revocation of probation. At the probation revocation hearing, Ware stipulated to violating the conditions of probation, including failing to complete his community service and counseling programs, testing positive for cocaine and marijuana, and getting arrested on additional criminal charges. After hearing arguments from counsel and Ware's explanations for the probation violations, the district court revoked Ware's probation and ordered him to serve the original sentence imposed.

Ware first contends that the district abused its discretion in revoking his probation. In particular, Ware contends that the district court should not have revoked his probation for failing to complete

substance abuse and petty larceny counseling because he had signed up for both programs, had sufficient time left on probation to complete them, and was never informed that he had to complete the programs by a certain date. We conclude that Ware's contention lacks merit.

The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse.[1] Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation.[2] In this case, we conclude that the district court acted within its broad discretion in revoking probation because Ware stipulated to the violations alleged by the State.

Ware also contends that the district court erred in revoking his probation because the sentence imposed in the amended judgment of conviction constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions.

Preliminarily, we note that Ware has waived his right to challenge the severity of his sentence by failing to pursue the matter in a direct appeal from the original judgment of conviction.[3] Although the district court's order is entitled, "Order for Revocation of Probation and

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[1]Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

[2]Id.

[3]See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"); overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Amended Judgment of Conviction," the order does not, in fact, amend the judgment of conviction to impose a different sentence, but instead merely revokes Ware's probation. Nonetheless, we have reviewed the record on appeal and conclude that the sentence imposed by the district court does not constitute cruel and unusual punishment.

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] 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.'"[5]

In the instant case, Ware does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional.[6] Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[7]

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

[5]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).

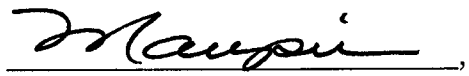
[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (recognizing that this court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence").

[7]See NRS 205.0835(3); NRS 193.330(1)(a)(4); NRS 193.130(2)(d) (providing for a prison term of 1 to 4 years).

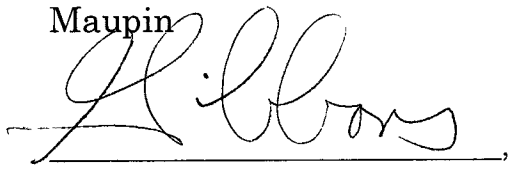
Finally, we disagree with Ware that the sentence imposed is grossly disproportionate to the charged crime as to shock the conscience.[8] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Ware's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons

_____, J.
Hardesty

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

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[8]Ware pleaded guilty to attempted theft for taking retail goods from a Wal-Mart store. The presentence investigation report noted that Ware had previously been arrested numerous times, had four prior felony convictions, and had two previous grants of probation revoked.