

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LAMAR GOINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45233

FILED

OCT 25 2005

ORDER OF AFFIRMANCE

JANETTE 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 felony possession of a controlled substance. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Gary Lamar Goins to serve a prison term of 12 to 48 months to run consecutively to the sentence imposed in an unrelated case.

Goins' sole contention is that the district court abused its discretion at sentencing by imposing consecutive sentences and disregarding the argument of defense counsel, as well as the mitigating evidence. Specifically, Goins argues that the sentence imposed is excessive given that he cooperated with law enforcement, had steady employment, and had previously successfully complete a term of house arrest. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Goins contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Goins' contention lacks merit.

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

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

This court has consistently afforded the district court wide discretion in its sentencing decision and 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 Regardless of 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.⁴

In the instant case, Goins does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Moreover, the sentence imposed was within the parameters provided by the relevant statutes,⁵ and the district court has discretion to impose consecutive sentences.⁶ Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience. Although Goins had gainful employment and had previously completed house arrest, he was on probation at the time he

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁴Blume 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)).

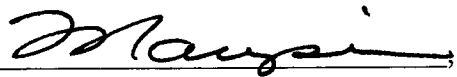
⁵See NRS 453.336(2)(b); NRS 193.130(2)(d) (providing for a prison sentence of 1 to 4 years).


⁶See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

committed the instant offense. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Steven R. Kosach, District Judge
Bruce D. Voorhees
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk