IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKEY TODD MAJOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45427

FILED

JUL 05 2006

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court sentencing appellant Rickey Todd Major to two consecutive terms of life in the Nevada State Prison without the possibility of parole. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On April 30, 1996, the district court convicted Major, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced Major to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole.[1] This court dismissed Major's direct appeal from his conviction.[2] The remittitur issued on September 23, 1998.

On January 8, 2004, Major filed a motion to modify illegal sentence in the district court, arguing that he never waived his right to be

[1]Hon. Jack B. Ames, District Judge, heard the trial of this matter and determined the original sentence.

[2]Major v. State, Docket No. 28879 (Order Dismissing Appeal, September 3, 1998).

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sentenced by a jury. The State opposed the motion. The district court granted Major's motion and set the matter for resentencing by a jury. Major subsequently waived his right to be resentenced by a jury and agreed to be resentenced by the district court. The district court held a new sentencing hearing on December 8, 2004, and continued the hearing on February 16, 2005. On June 1, 2005, the district court sentenced Major to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This appeal followed.

"A sentencing judge is allowed wide discretion in imposing a sentence; absent an abuse of discretion, the district court's determination will not be disturbed on appeal."[3] This court will not interfere with a sentencing decision so long as the record does not demonstrate prejudice resulting from consideration in the sentencing proceeding of information or accusations founded on facts supported only by impalpable or highly suspect evidence.[4]

First, Major argues the district court improperly imposed the maximum sentence by relying on the original sentence. We disagree. Our review of the record on appeal reveals that the district court stated on the record its intention to conduct a new hearing and not be bound by the previous sentence. Before determining the sentence, the district court reviewed the entire trial transcript and the pre-sentence investigation

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[3]Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993).

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

report (PSI) that was prepared on February 10, 2005. At the sentencing hearing, the district court stated it gave "some weight" to a felony conviction for marijuana cultivation that Major received in Colorado after the killing, it had no doubt Major had killed the victim and had premeditated the killing, the killing was "quite violent," and that Major had waited two weeks to report the victim missing, had engaged in deliberate manipulation of the investigation and obstruction of justice after reporting the victim missing, and had evidently begun planning to manipulate the investigation and obstruct justice right after the killing. We therefore conclude that the district court did not rely on the previous sentence in making its sentencing determination.

Second, Major argues the district court improperly imposed the maximum sentence by relying on Major's refusal to admit guilt. This claim is belied by the record.[5] Major admitted guilt and expressed remorse at the sentencing hearing, stating "I'm sorry for what I did to Tina and her family." In light of the district court's express reasons for imposing the sentence, we conclude that the district court's further statement that "had you stood up and been a man with regard to what you had done, I am not certain we would be here," does not establish the district court improperly relied on Major's refusal to admit guilt in imposing sentence. Rather, it merely restates the emphasis the district court placed on Major's manipulation of the investigation and obstruction of justice in determining the sentence.

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[5]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Third, Major argues the district court improperly used a 2005 PSI that was based solely on the PSI prepared when Major was convicted in 1996 and contained no newly obtained information about Major. We disagree. Assuming the district court relied on information contained in Major's initial 1996 PSI, the district court did not err in doing so. When a defendant is resentenced following invalidation of his or her previous sentence, a supplemental PSI is not required.[6] The district court was therefore entitled to rely on any information contained in the initial PSI, whether it was included in the 2005 PSI or not. Further, at the resentencing, Major was given an opportunity to note any errors in the 2005 PSI.

Fourth, Major argues the district court abused its discretion in sentencing Major to consecutive life terms without the possibility of parole. "[A]n abuse of discretion will be found only when the record demonstrates 'prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence . . . .'"[7] Major does not argue the district court relied on impalpable or highly suspect evidence. Rather, he argues his sentence "is disproportionate to the crime in a manner that is shocking to the conscience." We disagree. Major was convicted of killing the victim by stabbing her multiple times in the neck, torso, and legs. Major's sentence,

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[6]Anderson v. State, 90 Nev. 385, 528 P.2d 1023 (1974).

[7]Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978) (quoting Silks, 92 Nev. at 94, 545 P.2d at 1161).

while severe, is within the statutory limits for his crime,[8] is not disproportionate to his crime, and does not shock the conscience.

Having concluded Major's contentions lack merit, we ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Andrew J. Puccinelli, District Judge
Steve E. Evenson
Attorney General George Chanos/Carson City
Elko County District Attorney
Elko County Clerk

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[8]See 1977 Nev. Stat., ch. 598, § 5, at 1627 (NRS 200.030); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165).