IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID L. COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45673

FILED

JAN 19 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of battery with the intent to commit sexual assault. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant David L. Collins to serve two consecutive prison terms of 72-180 months and ordered him to pay a fine of $10,000.00.

Collins' sole contention is that the district court abused its discretion at sentencing. Specifically, Collins argues that the district court should have ordered his sentence to run concurrently with the sentence imposed in a Colorado case. In Colorado, Collins pleaded guilty to two counts of sexual assault of a child; the plea agreement in that case provided, in part, "The people agree to run this sentence concurrent to any sentence the defendant receives in Nevada." In effect, Collins is claiming that the Colorado plea agreement bound the district court and must be enforced in Nevada because "Nevada is very solicitous of protecting plea bargains as a matter of public policy." We disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision.[1] The district court's discretion, however, is not limitless.[2] 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."[3] 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.[4]

In the instant case, Collins 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.[5] Further, we note that a district court is not bound by a sentence recommendation in a plea agreement, let alone the alleged plea agreement in an unrelated case in a foreign jurisdiction.[6] And finally, Collins fails to demonstrate, or even allege, that the State breached the plea agreement

---

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

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

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

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

[5]See NRS 200.400(4)(c) (category B felony punishable by a prison term of 5-15 years and a fine of not more than $10,000.00).

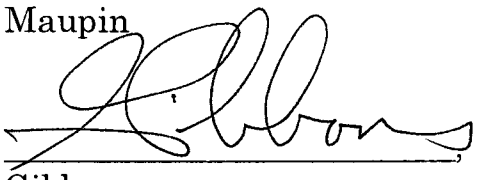
[6]See Stahl v. State, 109 Nev. 442, 851 P.2d 436 (1993).

in any manner. Therefore, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Maupin



_____, J.
Gibbons

_____, J.
Hardesty

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