

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK JEFFERY WILSON A/K/A
CRAIG JOSEPH WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45745

FILED

JAN 10 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted possession of a stolen motor vehicle. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Mark Jeffery Wilson to serve a prison term of 12-36 months and ordered him to pay \$690.00 in restitution.

Wilson's sole contention on appeal is that the district court abused its discretion at sentencing. Wilson pleaded guilty to a "wobbler," and therefore, understood that at the district court's discretion he could be sentenced for either a felony or a gross misdemeanor. Wilson now argues that the district court failed to exercise any discretion and merely followed the sentencing recommendation offered by the Division of Parole and Probation when it sentenced him for a felony "without telling us why." Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Wilson argues that this court should review the sentence imposed by the

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).

district court to determine whether justice was done. We conclude that Wilson's contention is without merit.

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.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ The district court's discretion, however, is not limitless.⁵ 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."⁶ 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.⁷

In the instant case, Wilson does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant

³Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁴Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

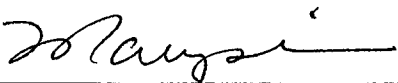
⁶Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

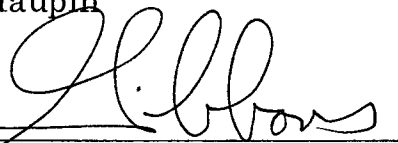
⁷Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

statutes.⁸ In exchange for Wilson's guilty plea, the State agreed to concur with the sentencing recommendation of the Division of Parole and Probation. Although defense counsel argued in favor of treating the offense as a gross misdemeanor for sentencing purposes, defense counsel also conceded that Wilson's extensive criminal history was "pretty bad." Further, despite Wilson's assertion to the contrary, the district court clearly explained the reasoning behind treating the offense as a felony, stating, "Mr. Wilson, based on this offense, that you ran from the officers, as well, and then your criminal history, I am going to treat this as a felony." Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

⁸See NRS 205.273(3); NRS 193.330(1)(a)(4); NRS 193.130(2)(d).

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk