IN THE SUPREME COURT OF THE STATE OF NEVADA

TIANNE KENNETH BARBEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45830

FILED

MAY 26 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 one count of sexual assault on a child under 16 years old committed on public school property. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Tianne Kenneth Barbee to serve two consecutive prison terms of life with the possibility of parole after 20 years.

Barbee contends that the district court abused its discretion because the sentence imposed is too harsh and is disproportionate to the crime. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Barbee contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Barbee's contention lacks merit.

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

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

founded on facts supported only by impalpable or highly suspect evidence."[3] Moreover, 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.'"[4]

In the instant case, Barbee 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] Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience. The instant offense involved two acts of sexual assault upon a 15-year-old girl on public school property,[6] and as the district court noted in imposing sentence, Barbee had previously been convicted of a sexual offense. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

In a related argument, Barbee contends that the district court erred at sentencing by imposing an equal and consecutive prison term pursuant to NRS 193.161, the on-school-property sentencing

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

[4]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).

[5]See NRS 200.366(3)(b); NRS 193.161(1).

[6]Barbee was originally charged with two counts of sexual assault on a child under the age of 16 and one count of first-degree kidnapping.

enhancement. Specifically, Barbee argues that NRS 193.161 should not apply because there were no children or school personnel present when the crime occurred and the victim was not a student of the school. Barbee argues that the Legislative intent behind NRS 193.161 – to ensure that school grounds are a safe haven for kids in our community – is not furthered by applying it to his case because the assault on the victim occurred in the middle of the night, "when not a kid was present or even contemplated to be present." We conclude that Barbee's contentions lack merit.

NRS 193.161(1) provides that "any person who commits a felony on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus is engaged in its official duties shall be punished by imprisonment in the state prison for a term equal [and consecutive] to and in addition to the term of imprisonment prescribed by statute for the crime." (Emphasis added.) The plain language of the statute is unambiguous. The district court shall impose an equal and consecutive sentence in cases where NRS 193.161(1) is charged and there is a finding that the crime was committed on school grounds, without consideration of whether children were present. If the Legislature intended to impose a requirement that children were present, it would have included language to that effect in the statute. We note that such a requirement was included in the school-property alternative sentencing statute, NRS 193.161(2), which provides for an alternative prison sentence of either 50 years or life, rather than an additional penalty for the primary offense, if there is a finding that children "were present or may have been present" when the crime was

committed.[7] In this case, in entering his guilty plea, Barbee conceded that the sexual assault occurred on school grounds.[8] Accordingly, we conclude that the district court did not err in imposing the school property enhancement pursuant to NRS 193.161(1).

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

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

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[7]See NRS 193.161(3) ("Subsection 1 does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed fact. Subsection 2 does not create a separate offense but provides an alternative penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed fact.").

[8]In entering the guilty plea, Barbee expressly reserved the right to argue that NRS 193.161 was inapplicable to his case because no children were present at the time the crime occurred.

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