

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. ZELLIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46178

**FILED**

**NOV 29 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted possession of a controlled substance. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Michael J. Zellis to serve a prison term of 12-34 months.

Zellis contends that the district court abused its discretion at sentencing by imposing a sentence which constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions.<sup>1</sup> We disagree with Zellis' contention.

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.<sup>2</sup> This court has consistently afforded the district court wide

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<sup>1</sup>See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

discretion in its sentencing decision.<sup>3</sup> The district court's discretion, however, is not limitless.<sup>4</sup> 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."<sup>5</sup> Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.<sup>6</sup>

In the instant case, Zellis 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 statutes.<sup>7</sup> Additionally, we note that Zellis has an extensive criminal history and committed the instant offense while on probation for an unrelated crime. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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<sup>3</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>6</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

<sup>7</sup>See NRS 453.336; NRS 193.330(1)(a)(6); NRS 193.130(2)(e).

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

ORDER the judgment of conviction AFFIRMED.<sup>8</sup>

Becker J.  
Becker

Hardesty J.  
Hardesty

Parraguirre J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>Because Zellis is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Zellis has submitted to this court in this matter.