IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNATHAN ADAM SCHUTZ A/K/A JOHNATHAN ADAM SCHUTZ, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46185

FILED

APR 07 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 attempted lewdness with a child under the age of 14. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant to a prison term of 96 to 240 months.

At sentencing, two psychologists reported that appellant was desirous of changing his behavior and that the incidents that led to the charges in this case appeared to be isolated. The district judge stated that he understood the evaluations, "but having sex with a five-year-old is just improper, immoral, and not going to be accepted by this court." The district judge went on to note that appellant was originally facing the possibility of two life sentences, and that appellant had received a substantial benefit by being allowed to plead guilty to one count of attempted lewdness.

Appellant contends that the district court abused its discretion at sentencing. Specifically, appellant argues that the sentence was

arbitrary and based on judicial bias. We conclude that appellant's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[1] This court 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."[2] Moreover, 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 as to shock the conscience.[3]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. The district judge's comments did not show that he had closed his mind to the evidence and were therefore not indicative of improper bias.[4] Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[5]

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

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

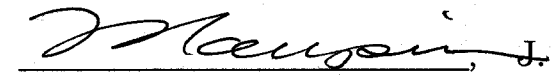
[3]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[4]See Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

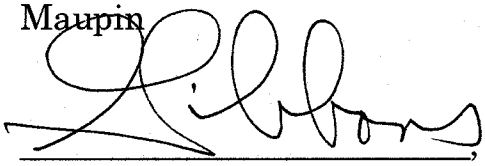
[5]See NRS 201.230(2); NRS 193.330(1)(a)(1).

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

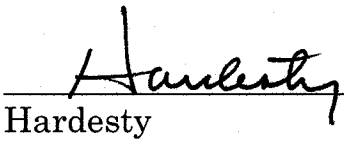
ORDER the judgment of conviction AFFIRMED.



_____, 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