

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY EUGENE WEATHERSPOON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46357

FILED

AUG 03 2006

ORDER OF AFFIRMANCE

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

This an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of driving while under the influence of an intoxicating liquor causing substantial bodily harm. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Terry Eugene Weatherspoon to serve a prison term of 36 to 144 months.

Weatherspoon contends that his sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.¹ We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.² Regardless of its severity, a

¹Weatherspoon primarily relies on Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978) ("a punishment may be constitutionally impermissible if it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity").

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

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."³

We have consistently afforded the district court wide discretion in its sentencing decision.⁴ 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."⁵

Here, Weatherspoon does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. We note that the sentence imposed was within the parameters provided by the relevant statute,⁶ and that Weatherspoon was informed of the potential penalties for his crime prior to entering his guilty plea. And we conclude that Weatherspoon's sentence is not "disproportionate to the seriousness of the offense or an affront to human dignity."⁷

³Blume 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).

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

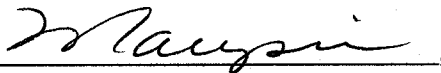
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

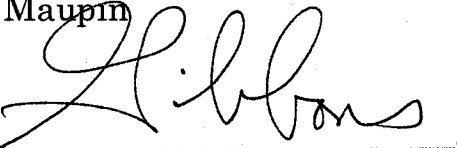
⁶See NRS 484.3795(1)(f).

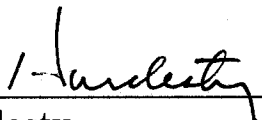
⁷Schmidt, 94 Nev. at 668, 584 P.2d at 697.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

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