

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAI VU, AKA MAI NGUYEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46485

FILED

MAY 25 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of obtaining money by false pretenses. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Mai Vu to a prison term of 28-72 months, consecutive to her prison sentence in California. The district court further ordered Vu to pay restitution in the amount of \$121,031.49.

Vu raises four issues on appeal. Vu did not preserve any of the issues she raises on appeal.¹ Accordingly, we review her claims only for plain error.

First, Vu claims the district court abused its discretion when it departed from a plea bargain agreement and the recommendations of the Department of Probation and Parole without first ordering a psychological examination. However, a district court is not bound at sentencing by a

¹Allred v. State, 120 Nev. 410, 418, 92 P.3d 1246, 1252 (2004) ("Failure to object to an issue at trial will generally preclude appellate review of that issue unless there is plain error.").

plea agreement or the Department of Probation and Parole's recommended terms. Additionally, if Vu wanted to present evidence of a psychological examination at the sentencing hearing, she was free to do so.

Next, Vu contends the district court erred by ordering restitution without conducting a financial examination pursuant to NRS 179.225(2), (3).² However, this statute pertains to restitution of extradition fees, rather than for harm done to victims. Moreover, Vu had the opportunity to present her financial status to the sentencing court and did not.

Third, Vu claims the district court erred by not including findings on Vu's ability to pay the ordered restitution. However, the district court is not required to consider the ability to repay.³

Last, Vu asserts the district court abused its discretion in ordering consecutive sentences. We conclude that Vu's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ 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."⁵ Moreover, regardless of its severity, "a sentence within the statutory limits is not 'cruel and unusual punishment unless

²NRS 179.225(2), (3).

³Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

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

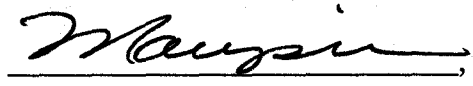
⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."⁶

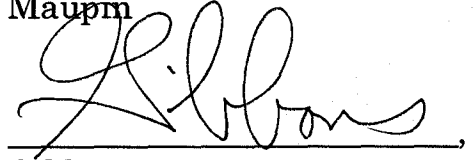
In the instant case, Vu does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed is within the parameters provided by the relevant statute.⁷ Moreover, it is within the district court's discretion to impose consecutive sentences.⁸

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁶Blume 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)).

⁷See NRS 205.380(1)(a).

⁸See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

cc: Hon. Steven R. Kosach, District Judge
Kenneth J. McKenna
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk