

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO RAMON HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46584

FILED

MAY 26 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to pleas of no contest and guilty, of one count of attempted sexual assault on a child and one count of attempted sexual assault. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Francisco Ramon Herrera to serve two consecutive prison terms of 60 to 220 months. Herrera presents two issues for our review.

First, Herrera contends that his sentences constitute cruel and unusual punishment. He specifically claims that his sentences are grossly disproportionate to his offenses and that they are extremely harsh considering his youthful age. We disagree. 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 to the crime as to shock the conscience.¹ Here, Herrera has not alleged that the relevant statutes are unconstitutional. We note that the sentences falls within the parameters provided by the relevant statutes,² and we conclude that the sentences are not unreasonably disproportionate to the crimes to which Herrera pled no contest and guilty.

Second, Herrera contends that the district court abused its discretion by imposing the sentences to run consecutively. We disagree. The district court has wide discretion in its sentencing decisions,³ and we will not interfere 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."⁴ Here, Herrera does not allege that the district court relied on impalpable or highly suspect evidence.

¹Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (citing Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

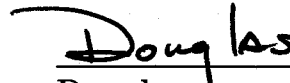
²See NRS 193.330(1)(a)(1) (an attempt to commit a category A felony is punishable by a prison term of 2 to 20 years); NRS 200.366(2),(3) (sexual assault and sexual assault on a child are category A felonies).


³See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987); see also NRS 176.035(1) (providing the district court with the discretion to make a sentence concurrent or consecutive).

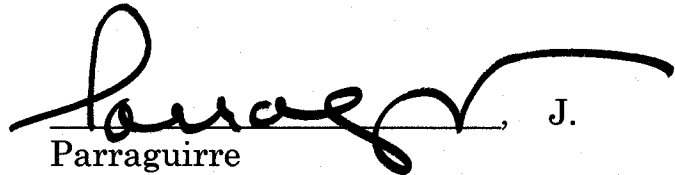
⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Dennis A. Cameron
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk