

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFONSO REFUGIO AVINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46629

ALFONSO REFUGIO AVINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46630

FILED

MAY 24 2006

ORDER OF AFFIRMANCE

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

These are consolidated appeals from an order revoking probation and from a judgment of conviction, pursuant to a guilty plea, of one count of a stolen vehicle. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On September 16, 2005, appellant Alfonso Avina was sentenced to a prison term of 12-32 months for possession of a controlled substance for the purpose of sale. That sentence was suspended and Avina was placed on probation. Less than 3 months later, Avina's probation was revoked and he was sentenced to 12-34 months in prison on his possession of a stolen vehicle case. The sentence was ordered to run consecutively to the sentence Avina was ordered to serve as a result of his probation being revoked.

Avina's sole contention on appeal is that the district court abused its discretion when it ordered the sentences to run consecutively. We conclude that Avina'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, regardless of its severity, a 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

In the instant case, Avina 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

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

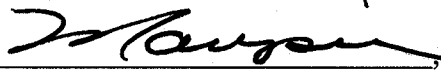
²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

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).


is within the parameters provided by the relevant statute.⁴ Moreover, it is within the district court's discretion to impose consecutive sentences.⁵

Having considered Avina's contention and concluding that it is without merit, we

ORDER the judgment of the district court AFFIRMED.



Maupin J.



Gibbons J.



Hardesty J.

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

⁴See NRS 453.337(2)(a); NRS 193.130(2)(a); NRS 205.273(3);

⁵See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).