

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY L. MONTIEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46635

FILED

JUL 06 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count each of conspiracy to commit first-degree kidnapping with the use of a deadly weapon, first-degree kidnapping, conspiracy to commit robbery with the use of a deadly weapon, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

The district court sentenced appellant Anthony L. Montiel as follows: for conspiracy to commit first-degree kidnapping, to a prison term of 24 to 60 months, with an equal and consecutive term for the use of a deadly weapon; for first-degree kidnapping, to a prison term of 60 to 180 months; for conspiracy to commit robbery, to a prison term of 24 to 60 months, with an equal and consecutive term for the use of a deadly weapon; and for robbery, a prison term of 36 to 96 months, with an equal and consecutive term for the use of a deadly weapon.

Montiel contends that the district court abused its discretion by imposing a sentence that amounted to cruel and unusual punishment. We disagree.

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 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

Montiel does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. And our review of the record reveals that the district court imposed sentences for conspiracy, kidnapping, and robbery that fall within the statutory limits.⁴ Accordingly, we conclude that Montiel's sentence does not constitute cruel and unusual punishment.

However, our review of the record also reveals that the district court improperly enhanced Montiel's sentences for conspiracy using the

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

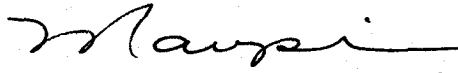
²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

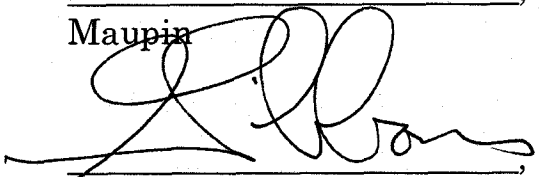
³Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

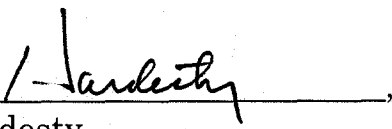
⁴See NRS 199.480(1)(a); NRS 200.320(2)(b); NRS 200.380(2).

deadly weapon enhancement.⁵ These enhancements must be vacated. We therefore

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court with instructions to vacate the deadly weapon enhancements imposed on both of Montiel's conspiracy sentences and enter a corrected judgment of conviction.⁶


_____, 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
Anthony L. Montiel

⁵See Moore v. State, 117 Nev. 659, 663, 27 P.3d 447, 450 (2001) (holding that a sentence for the crime of conspiracy may not be enhanced by the deadly weapon enhancement); see NRS 193.165(1).

⁶Because Montiel is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Montiel unfiled all proper person documents he has submitted to this court in this matter.