IN THE SUPREME COURT OF THE STATE OF NEVADA

CRYSTAL HICKMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46714

FILED

JUL 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Crystal Hickman to serve a prison term of 24-100 months.

Hickman's sole contention is that the district court abused its discretion at sentencing by not granting her probation. Hickman argues that "[t]he best protection society could get is a permanent positive resolution" of her mental illness, and that placement in a "strict, long-term, in-patient treatment facility designed to address her mental illness and substance abuse" would be more appropriate. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Hickman argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Hickman's contention is without merit.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but

[1]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

forbids only an extreme sentence that is grossly disproportionate to the crime.[3] This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] Nevertheless, 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."[6] Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment unless the statute itself is unconstitutional, or the sentence is so unreasonably disproportionate to the crime as to shock the conscience.[7]

In the instant case, Hickman does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statute.[8] Hickman concedes that she committed a violent offense – admitting that she "shoved" an 85-year-old woman to the ground in the course of stealing her purse. At the sentencing hearing, the district court

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

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

[5]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

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

[7]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[8]See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years).

noted the nature of Hickman's offense and called it "a particularly despicable act." The district court was not "comfortable" granting a term of probation, but due to Hickman's youth, stated, "I do think a minimum sort of sentence is probably appropriate." We also note that the granting of probation is discretionary.[9] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing by imposing a term of incarceration.

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

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

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

[9]See NRS 176A.100(1)(c).