IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD STEVEN GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46748

FILED

MAY 22 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of three counts of willful sexual abuse of a child under the age of 18 years, and one count of attempted battery with the intent to commit sexual assault on a victim under 14 years old. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Todd Steven Garcia to serve three consecutive prison terms of 27 to 72 months for the sexual abuse counts and a concurrent prison term of 24 to 60 months for the attempted battery count.

Garcia's sole contention is that the district court abused its discretion at sentencing. Specifically, Garcia argues that the sentence imposed is too harsh given that the psychosexual evaluator concluded that he was a low risk to reoffend. We conclude that Garcia's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision.[1] This court will refrain from

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

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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, Garcia does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[4] Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. We note that Garcia was originally charged with 7 counts of lewdness on a minor under the age of the 14 years for molesting several of his girlfriend's young children and, in imposing sentence, the district court noted that its main concern was the protection of society. Accordingly, the district court did not abuse its discretion at sentencing.

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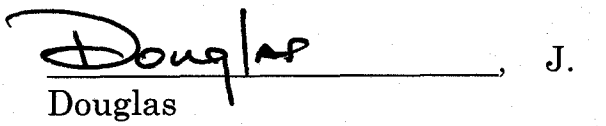
[2]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[3]Blume 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).

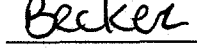
[4]See NRS 200.508(1)(b)(1) (providing for a prison term of 1 to 6 years); NRS 200.400(4)(c); NRS 193.330(1)(a) (2) (providing for a prison term of 1 to 10 years).

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

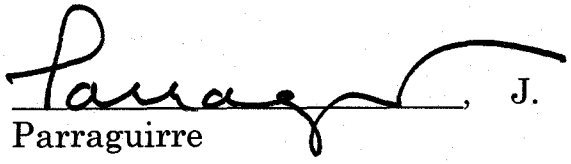
ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas



_____, J.
Becker



_____, J.
Parraguirre

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General George Chanos/Carson City
Elko County District Attorney
Elko County Clerk