IN THE SUPREME COURT OF THE STATE OF NEVADA

HEROLD WILSON A/K/A HAROLD WILSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34176
FRANK GENNARO LORENZO, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34256
ROBERT LEE CHATMAN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34420
ANTHONY RAY JOHNSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34541
BRIAN ADRIAN HENDRICKS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34692
ADRIANA V. ZIER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34927

FILED

APR 04 2000

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

00-05369
01-05007

WAYNE BARKLEY SKEES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35033

ORDER DISMISSING APPEALS

Docket No. 34176 is an appeal from a judgment of conviction, pursuant to a guilty plea, of grand larceny and burglary. Docket Nos. 34256 and 35033 are appeals from judgments of conviction, pursuant to Alford[1] pleas, of burglary. Docket No. 34420 is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted burglary. Docket No. 34541 is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Docket No. 34692 is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with substantial bodily harm. Docket No. 34927 is an appeal from a judgment of conviction, pursuant to an Alford plea, of attempted burglary. We previously granted a motion to consolidate these cases for disposition. See NRAP 3(b).

Appellants object to being required to provide blood samples for genetic marker testing as a result of their convictions. They contend that NRS 176.0913, which authorizes DNA testing of individuals convicted of certain enumerated criminal offenses, does not apply to them because the legislature only intended it to apply to sexual offenders. Additionally, appellants challenge the constitutionality of NRS 176.0913, arguing that the statute is overbroad and that it violates their right to be free from unreasonable searches and seizures, right to equal protection, right to due process, right to privacy, and right to be free from cruel and unusual

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

punishment. We recently rejected all of these arguments in Gaines v. State, 116 Nev. ___, ___ P.2d ___ (Adv. Op. No. 39, March 13, 2000).[2] We decline to revisit these issues.

Appellant Herold Wilson also contends that the district court violated his right to due process and to equal protection by refusing to give him credit for time served against each count of which he was convicted.[3] Wilson argues that because he was being held on two counts in this case and the court could set a different bail amount for each count so that he might have been able to make bail on one count but not the other, he is entitled to credit on both counts pursuant to NRS 176.055 and Kuykendall v. State, 112 Nev. 1285, 926 P.2d 781 (1996). We conclude that this contention is patently without merit. Kuykendall merely requires that a defendant receive credit for all time served in a case. Wilson received that credit in this case; he is not entitled to double-count the same time simply because he faced two charges.

Appellant Wayne Barkley Skees contends that the sentence imposed against him constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because the sentence is disproportionate to the crime.[4] Skees argues that the sentence is cruel and unusual in light of his age, good health, family obligations, potential for contributing to his family and the community, and need for mental health treatment. Skees further argues that his sentence is greater than that often received for violent crimes such as manslaughter and fighting with the use of a deadly weapon. We conclude that Skees' contention lacks merit.

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[2]Appellants also contend that NRS 176.0913 is ambiguous because subsections (4)(b) and 4(j) are in conflict and because NRS 197A.075, which defines the duties of the central depository, only authorizes the depository to collect genetic marker information from individuals convicted of sexual offenses. We rejected these arguments in Gaines.

[3]Wilson received credit for 87 days of presentence incarceration.

[4]The district court sentenced Skees to four (4) to ten (10) years in prison for burglary.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). 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.'" 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 91979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

This court has consistently afforded the district court wide discretion in its sentencing decision. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). 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 . . . ." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

In the instant case, Skees does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Further, as Skees acknowledges, the sentence imposed was within the parameters provided by the relevant statute. See NRS 205.060(2) (providing punishment for burglary is imprisonment for term of not less than 1 year and not more than 10 years). Finally, we conclude that the sentence imposed is not so unreasonably disproportionate to the offense as to shock the conscience.[5]

[5]We note that the burglary charge included an allegation that Skees had a prior burglary conviction, and therefore, Skees was not eligible for probation. See NRS 205.060(2). Moreover, we note that before plea negotiations Skees faced two felony counts in this case (burglary and theft) and a habitual criminal enhancement. Additionally, the documents submitted with this appeal indicate that Skees entered the victims' home while they were present.

Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered appellants' contentions and concluded that they lack merit, we

ORDER these appeals dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Ronald D. Parraguirre, District Judge
Hon. Michael E. Fondi, District Judge
Attorney General
Clark County District Attorney
Carson City District Attorney
Clark County Public Defender
State Public Defender
Clark County Clerk
Carson City Clerk