

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATHEW LAWRENCE SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46881

**FILED**

**JUL 06 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with a deadly weapon causing substantial bodily harm. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Mathew Lawrence Smith to serve a prison term of 72-180 months to run consecutively to the sentence imposed in district court case no. C86-947, and ordered him to pay \$32,100.00 in restitution.

Smith's sole contention is that the district court abused its discretion by imposing an excessive sentence. Smith claims that the district court "disregarded the argument of counsel and mitigating evidence," including the fact that Smith "has attempted to address" his alcoholism. Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Smith argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Smith's contention is without merit.

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<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

<sup>2</sup>107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.<sup>3</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> The district court's discretion, however, is not limitless.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>

In the instant case, Smith 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.<sup>8</sup> Further, Smith has an extensive criminal history, including a

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<sup>3</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>4</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>5</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>6</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

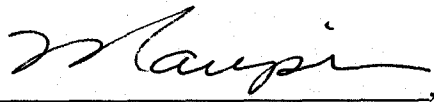
<sup>7</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).


<sup>8</sup>See NRS 200.481(2)(e)(2) (category B felony punishable by a prison term of 2-15 years).

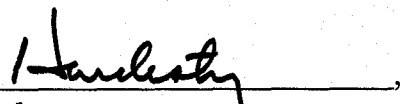
first-degree murder conviction and three misdemeanor DUI convictions. And finally, we note that Smith committed the instant offense, initially charged as attempted murder with the use of a deadly weapon, while on parole. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Janet J. Berry, District Judge  
Bruce D. Voorhees  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk