

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY WAYNE HOGAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46893

**FILED**

JUN 29 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of domestic battery with substantial bodily harm. First Judicial District Court, Carson City; William A. Maddox, Judge.

The district court sentenced appellant Timothy Wayne Hogan to a prison term of 12-32 months. Hogan contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada constitutions because it is disproportionate to the crime.<sup>1</sup> Specifically, Hogan argues that it is unconstitutional to send him to prison for his first conviction. We disagree.

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.<sup>2</sup> Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual

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<sup>1</sup>Appellant primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."<sup>3</sup>

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>4</sup> 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."<sup>5</sup>

In the instant case, Hogan does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>6</sup> Moreover, the granting of probation is discretionary.<sup>7</sup> Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

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<sup>3</sup>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).

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

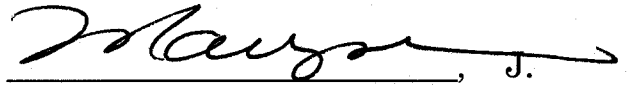
<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>6</sup>See NRS 193.130(2)(c); 200.481(2)(b).

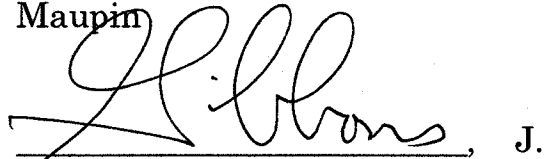
<sup>7</sup>See NRS 176A.100(1)(c).

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

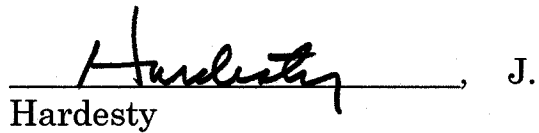
ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. William A. Maddox, District Judge  
State Public Defender/Carson City  
Attorney General George Chanos/Carson City  
Carson City District Attorney  
Carson City Clerk