IN THE SUPREME COURT OF THE STATE OF NEVADA

MARQUESE DONTAY PICKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46904

FILED

JUN 29 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of conspiracy to commit robbery (count 1), robbery with use of a deadly weapon (counts 2 and 3), and failure to stop on the signal of a police officer (count 4). Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Marquese Dontay Pickett to serve a prison term of 12 to 48 months for count 1, a concurrent prison term of 26 to 120 months with an equal and consecutive term for the use of a deadly weapon for count 2, a consecutive prison term of 26 to 120 months with an equal and consecutive term for the use of a deadly weapon for count 3, and a concurrent prison term of 12 to 48 months for count 4. The district court also ordered Pickett to pay $15,615.28 in restitution.

Pickett first contends that the sentence constitutes cruel and unusual punishment in violation of the United States and Nevada Constitutions because the sentence is disproportionate to the crime.[1] Specifically, Pickett argues that the sentence imposed is too harsh because

[1]Pickett primarily relies on Solem v. Helm, 463 U.S. 277 (1983).

it was longer than the sentence recommended by the Division of Parole and Probation, and he received the same sentence as his co-defendant even though Pickett was younger and less culpable. 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.[2] 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]

This court has consistently afforded the district court wide discretion in its sentencing decision.[4] 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."[5]

In the instant case, Pickett 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

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

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

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

was within the parameters provided by the relevant statutes.[6] Finally, we conclude that the sentence is not so unreasonably disproportionate to the offense as to shock the conscience. Accordingly, the sentence imposed does not constitute cruel and unusual punishment.

Pickett also contends that the district court erred by ordering restitution without first holding a restitution hearing. We agree.

In Martinez v. State, this court held that a criminal defendant "is entitled to challenge restitution sought by the [S]tate and may obtain and present evidence to support that challenge."[7]

In this case, the district court determined restitution based on the calculation from the Division of Parole and Probation contained in the presentence investigation report.[8] At the sentencing hearing, counsel for Pickett objected to the amount of restitution and requested an evidentiary hearing, explaining that she did not believe that the stolen car was totaled, but even if it was, the Kelly Blue Book value of the vehicle was from $5,000.00-$10,800.00, depending on the condition of the vehicle. The prosecutor responded that he had not spoken to the victim about the issue, but speculated that there could have been personal property in the car. The court denied the request, ruling that it did not have any evidence contradicting the victim's assessment. We conclude that district court erred by refusing Pickett's request for an evidentiary hearing on the issue

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[6]See NRS 199.480(1)(a); NRS 200.380(2); NRS 193.165(1); NRS 484.348(3)(b).

[7]115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

[8]The Division of Parole and Probation apparently calculated the amount of restitution based on the victim's account of the loss.

of restitution because there was insufficient evidence in the record substantiating the calculation in the presentence investigation report.

Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Robert L. Langford & Associates
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk