IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBYN IONE MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46928

FILED

OCT 17 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 guilty plea, of obtaining and/or using the personal identification information of another (counts IV-V, VII, X, XVIII-XIX), possession of a credit card without consent (count VI), burglary (counts VIII, XVI-XVII), and uttering a forged instrument (counts IX, XIV-XV). Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Robyn Ione Martin to serve six concurrent prison terms of 24-144 months for the identity theft counts, three concurrent prison terms of 15-60 months for the burglary counts to run consecutively to the sentence imposed for count IV, a prison term of 12-34 months for count VI to run concurrently with the sentence imposed for count VIII, and three concurrent prison terms of 12-34 months for the uttering counts to run consecutively to the sentence imposed for count VIII. The district court ordered Martin to pay $10,482.23 in restitution.

First, Martin contends that the district court erred in denying her presentence motion to withdraw her guilty plea. Martin argues that she should have been allowed to withdraw her guilty plea because "(1) [a] joint defense was articulated by her co-defendant . . . ; and (2) [she] alleged a conflict with her attorney." We disagree with Martin's contention.

"A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason' if it is 'fair and just.'"[1] In deciding whether a defendant has advanced a substantial, fair, and just reason to withdraw a guilty plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.[2] The district court "has a duty to review the entire record to determine whether the plea was valid. . . . [and] may not simply review the plea canvass in a vacuum."[3] A defendant has no right, however, to withdraw his plea merely because he moves to do so prior to sentencing or because the State failed to establish actual prejudice.[4] Nevertheless, a more lenient standard applies to motions filed prior to sentencing than to motions filed after sentencing.[5] An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.[6] "On appeal from

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[1]Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

[2]See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

[3]Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

[4]See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

[5]See Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

[6]NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984)).

the district court's determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."[7]

We conclude that the district court did not abuse its discretion in denying Martin's presentence motion to withdraw her guilty plea. The district court conducted a hearing on Martin's motion and determined that she failed to articulate a fair and just reason sufficient to warrant granting her motion to withdraw. Our review of the record on appeal reveals that Martin was thoroughly canvassed by the district court prior to the entry of her guilty plea, and we note that she read, signed, and stated that she understood the written guilty plea agreement. Accordingly, we conclude that Martin's contention is without merit.

Second, Martin contends that the district court abused its discretion at sentencing. Specifically, Martin claims that her sentence is excessive because some of the prison terms were ordered to run consecutively. Citing to the dissents in Tanksley v. State[8] and Sims v. State[9] for support, Martin argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Martin's contention is without merit.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but

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[7]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[8]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[9]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

forbids only an extreme sentence that is grossly disproportionate to the crime.[10] This court has consistently afforded the district court wide discretion in its sentencing decision.[11] The district court's discretion, however, is not limitless.[12] 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."[13] Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[14]

In the instant case, Martin does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[15] We also note that it is within the district court's discretion to

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

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

[12]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

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

[14]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[15]See NRS 205.060(2) (category B felony punishable by a prison term of 1-10 years); NRS 205.090 (category D felony punishable by a prison term of 1-4 years); NRS 205.463(1) (category B felony punishable by a

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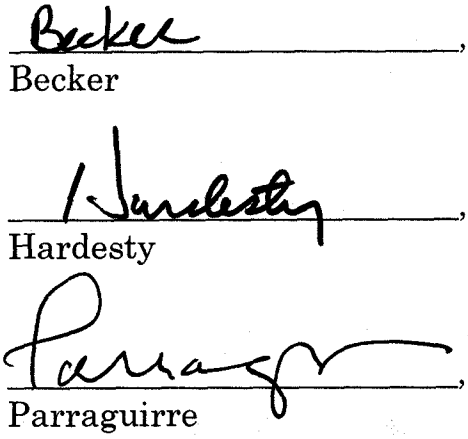
impose consecutive sentences.[16] Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Martin's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



Becker, J.

Hardesty, J.

Parraguirre, J.

cc: Hon. Jerome Polaha, District Judge
Steven L. Sexton
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

. . . *continued*

prison term of 1-20 years); NRS 205.690(2) (category D felony punishable by a prison term of 1-4 years).

[16]See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).