

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW VIRGIL THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46963

FILED

JUN 29 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 principal to the crime of discharging a firearm at or into a structure. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. The district court sentenced appellant Matthew Virgil Thompson to serve a prison term of 13-60 months.

Thompson's sole contention is that the district court abused its discretion at sentencing. Specifically, Thompson argues that the district court "gave inadequate weight to [his] youth, his cooperation with the authorities, the fact that he never possessed or fired a weapon, and the District Attorney's recommendation of probation." Thompson also claims that the district court, at the beginning of the sentencing hearing, was under the mistaken assumption that he was one of the shooters.

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.¹ This court has consistently afforded the district court wide

¹Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

discretion in its sentencing decision.² The district court's discretion, however, is not limitless.³ 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."⁴ Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment unless the statute itself is unconstitutional, and the sentence is so unreasonably disproportionate to the crime as to shock the conscience.⁵

In the instant case, Thompson cannot demonstrate that the district court relied on impalpable or highly suspect evidence, and he does not allege 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.⁶ At the sentencing hearing, the district court expressly stated that it took the mitigating factors into consideration. Nevertheless, based on the nature of the offense, which the district court noted involved, on two occasions, shooting at a house and hitting two residences in order "to teach somebody a lesson," the district court imposed a term of incarceration. Finally, the granting of probation

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

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

⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

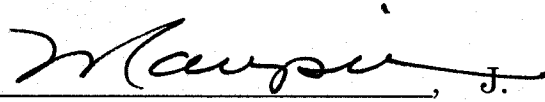
⁵Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

⁶See NRS 202.285(1)(b) (category B felony punishable by a prison term of 1-6 years); NRS 195.020.

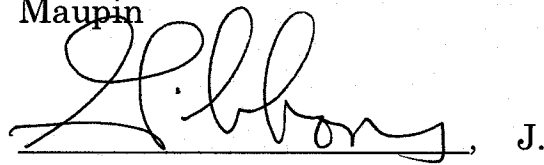
is discretionary.⁷ Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

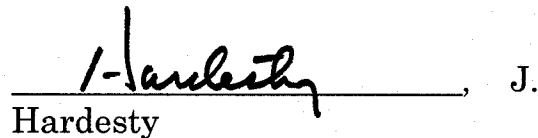
ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Robert E. Estes, District Judge
Chet Kafchinski
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk

⁷See NRS 176A.100(1)(c).