

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS ROBERT BENDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46992

FILED

OCT 10 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of driving under the influence causing death and driving under the influence causing substantial bodily harm. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. The district court sentenced appellant Nicholas Robert Bender to serve two consecutive prison terms of 76-192 months, and ordered him to pay a fine of \$4,000.00 and restitution in the amount of \$627,694.72 to three victims.

Bender contends that the district court abused its discretion by imposing a harsh sentence "in excess of sentences typically imposed in such cases." Bender argues that because his criminal history is minimal and the instant crime "was not a deliberate act of violence," a more lenient sentence is appropriate in light of the sentencing goals listed in NRS 176.0125(3)(a), (c), and (d). We disagree.

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 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 where the statute itself is constitutional, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁵

In the instant case, Bender 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.⁶ Moreover, we note that in exchange for Bender's guilty plea, the State agreed to dismiss four additional counts of DUI causing substantial bodily harm, one count of unlawful use or being under the influence of a

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

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 484.3795(1) (category B felony punishable by a prison term of 2-20 years and a fine of \$2,000-\$5,000).

controlled substance (marijuana), and two misdemeanor driving violations. At the sentencing hearing, the district court heard about the severe injuries suffered by the six victims, and followed the recommendation of the Division of Parole and Probation rather than the even harsher sentence requested by the State. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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