IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EDWARD SCHOEB A/K/A WILLIAM E. SCHOEB, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46997

FILED

JUN 29 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of robbery and attempted grand larceny of a motor vehicle. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant William Edward Schoeb to serve two consecutive prison terms of 26-120 months and 12-34 months, and ordered him to pay $4,929.34 in restitution jointly and severally with his codefendant.

Schoeb's sole contention is that the district court abused its discretion at sentencing by imposing a sentence which constitutes cruel and/or unusual punishment in violation of the United States and Nevada Constitutions.[1] More specifically, Schoeb claims that his sentence "is nothing more than purposeless and needless imposition of pain and suffering" and that he "committed [the] criminal acts while a juvenile and has since changed his life." Schoeb argues that a term of probation or

[1]See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6.

house arrest "would allow [him] to continue being a productive citizen." We disagree with Schoeb's contention.

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.[2] This court has consistently afforded the district court wide discretion in its sentencing decision.[3] The district court's discretion, however, is not limitless.[4] 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."[5] 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.[6]

In the instant case, Schoeb does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant

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

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

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

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

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

sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[7] Schoeb was certified as an adult for criminal proceedings on January 26, 2001, and was initially charged with robbery or principal to robbery, first-degree kidnapping or principal to first-degree kidnapping or second-degree kidnapping or principal to second-degree kidnapping, burglary or principal to burglary, grand larceny of a motor vehicle or principal to grand larceny of a motor vehicle or theft or principal to theft, escape, conspiracy to commit escape, and conspiracy to commit robbery. Schoeb committed these offenses during the course of an escape from the Nevada Youth Training Center.

Schoeb failed to appear for his sentencing hearing and was not taken into custody on a bench warrant for more than four years, after he was stopped for a traffic offense in December 2005. In exchange for his guilty plea to the two counts, Schoeb received a substantial benefit – the State agreed to dismiss the remaining charges. At the sentencing hearing, the district court noted the severity and violent nature of Schoeb's crimes, and followed the sentencing recommendation of the Division of Parole and Probation. And finally, we note that the granting of probation is

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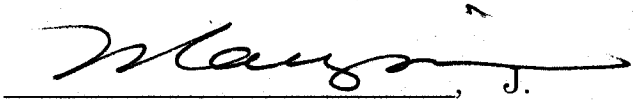
[7]See NRS 200.380(2) (category B felony punishable by a prison term of 2-15 years); NRS 205.228; NRS 193.330(1)(a)(4) (attempt to commit a category C felony punishable as a category D felony); NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years).

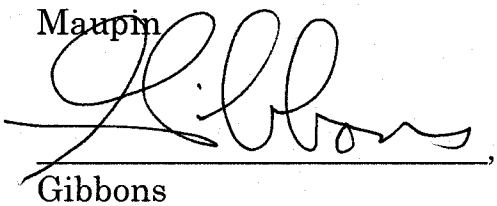
discretionary.[8] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

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

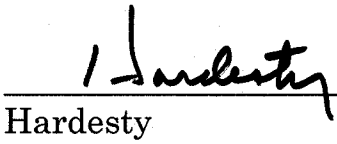
ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Andrew J. Puccinelli, District Judge
Hillewaert Law Firm
Attorney General George Chanos/Carson City
Elko County District Attorney
Elko County Clerk

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[8]See NRS 176A.100(1)(c).