

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE GREGORIO ROSARIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47426

FILED

SEP 27 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of assault with a deadly weapon. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Andre Gregorio Rosario to serve a prison term of 12 to 42 months.

Rosario's sole contention on appeal is that the district court abused its discretion at sentencing by refusing to grant probation. Specifically, Rosario claims that he should have received a suspended sentence with conditions designed to teach him how to control his anger. Citing to the dissents in Tanksley v. State¹ and Sims v. State² for support, Rosario contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Rosario's contention is without merit.

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

¹113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

²107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

crime.³ This court has consistently afforded the district court wide discretion in its sentencing decision.⁴ 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 Moreover, 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."⁶

In the instant case, Rosario does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. Moreover, we note that the sentence imposed by the district court was within the parameters provided by the relevant statute,⁷ and that the granting of probation is discretionary.⁸ Prior to imposing sentence, the district court considered arguments from counsel, the presentence investigation report, and

³Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁴Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

⁵Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999).

⁶Blume 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).

⁷See NRS 200.471(2)(b) (providing for a prison terms of 1 to 6 years).

⁸See NRS 176A.100(1)(c).

Rosario's statement of allocution. In refusing to grant probation, the district court noted that Rosario had previously committed a violent offense and, in this case, stabbed someone in the course of a fight. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Rosario's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk