IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BONEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47429

FILED

SEP 12 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 of possession of a controlled substance. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant William Boney to serve a prison term of 12-48 months.

Boney's sole contention on appeal is that the district court abused its discretion at sentencing. Boney claims that probation with conditions designed to assist him in overcoming his drug addictions would be more appropriate than a term of incarceration. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Boney argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Boney's contention is without merit.

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

[1]113 Nev. 844, 849, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]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.[3] This court has consistently afforded the district court wide discretion in its sentencing decision.[4] The district court's discretion, however, is not limitless.[5] 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."[6] 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.[7]

In the instant case, Boney 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.[8] The district court imposed the sentence recommended by the Division of Parole and Probation, which the State concurred with based on Boney's criminal history. And finally, we note that the granting of

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

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

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

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

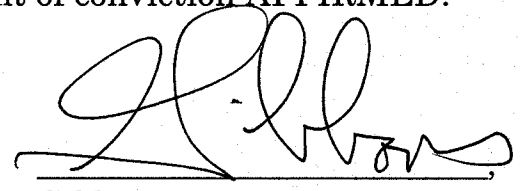
[7]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[8]See NRS 453.336(2); NRS 193.130(2).

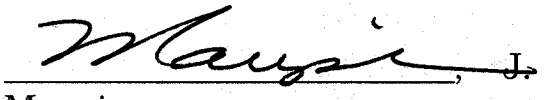
probation is discretionary.[9] Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing by imposing a term of incarceration.

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

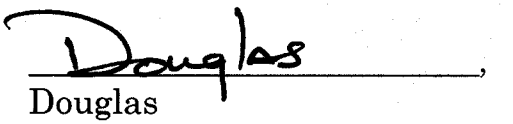
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Maupin



_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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