

IN THE SUPREME COURT OF THE STATE OF NEVADA

OLEND DEE CRABTREE, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47544

**FILED**

**NOV 28 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of unlawful sale of a controlled substance. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Olend Dee Crabtree, Jr., to serve a prison term of 12-36 months.

Crabtree's sole contention on appeal is that the district court abused its discretion at sentencing by refusing to grant him probation. Specifically, Crabtree argues that the sentence imposed is excessive "given his efforts at recovery, as well as the length of time since his last serious offense." Citing to the dissents in Tanksley v. State<sup>1</sup> and Sims v. State<sup>2</sup> for support, Crabtree argues that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Crabtree's contention is without merit.

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

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<sup>1</sup>113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

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

In the instant case, Crabtree 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.<sup>8</sup> Moreover, Crabtree has an extensive criminal history spanning 30 years, with numerous convictions, revoked terms of probation and

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

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

<sup>5</sup>Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

<sup>6</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

<sup>7</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

<sup>8</sup>See NRS 453.321(2)(a) (category B felony punishable by a prison term of 1-6 years).

parole, and dishonorable discharges from parole. And finally, we note that the granting of probation is discretionary.<sup>9</sup> 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 Crabtree'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. Steven R. Kosach, District Judge  
John P. Calvert  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>9</sup>See NRS 176A.100(1)(c).