IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH WILLIAM SULLIVAN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48007
KEITH WILLIAM SULLIVAN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48008
KEITH WILLIAM SULLIVAN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48009

FILED
JAN 11 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

These are consolidated appeals from judgments of conviction entered pursuant to guilty pleas. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

In Docket No. 48007, appellant Keith William Sullivan was convicted of one count of felony possession of a stolen motor vehicle and sentenced to serve a prison term of 48 to 120 months. In Docket No. 48008, Sullivan was convicted of one count of felony possession of a stolen motor vehicle and sentenced to serve a prison term of 48 to 120 months, to run consecutively to the sentence imposed in Docket No. 48007. The district court also ordered Sullivan to pay $260.00 in restitution. In Docket No. 48009, Sullivan was convicted of one count of felony possession

of a motor vehicle and sentenced to serve a prison term of 16 to 72 months, to run consecutively to the sentence imposed in Docket No. 48008. The district court also ordered Sullivan to pay restitution in the amount of $5,068.82.

Sullivan first contends that the district court abused its discretion at sentencing by refusing to delay sentencing so that Sullivan could attend an in-patient drug treatment program. Citing to the dissents in Tanksley v. State[1] and Sims v. State[2] for support, Sullivan contends that this court should review the sentence imposed by the district court to determine whether justice was done. We conclude that Sullivan's contention lacks 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 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

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[1]113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

[2]107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting).

[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).

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, Sullivan 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] Accordingly, the district court did not abuse its discretion at sentencing.

Sullivan next contends that the district court abused its discretion in ordering him to pay $5,068.62 in restitution to the victim in Docket No. 48009. Specifically, Sullivan argues that the restitution ordered resulted in a windfall for the victim because she opted to repair the damaged delivery truck herself at a cost of $735.09. The State argues that the victim was entitled to the $735.09 spent on the vehicle repair, plus an additional $4,000.00, the cost of having the delivery truck professionally repainted. The State concedes, however, that the record is insufficient to determine how the district court calculated the remaining

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[5]Silks 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).

[6]Blume 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).

[7]See NRS 205.273(4) (providing for a prison term of 1 to 10 years).

$333.53 in restitution and has "no objection to limited remand to determine the basis of that amount." We conclude that a restitution hearing is appropriate.

A defendant may be ordered to pay restitution only for losses arising from "an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution."[8] "The purpose of a restitution order is to put the victim 'in the same position as if the illegal activity had not occurred.'"[9] Although the district court has discretion in imposing restitution, the determination should be based on reliable and accurate evidence.[10] A criminal defendant "is entitled to challenge restitution sought by the [S]tate and may obtain and present evidence to support that challenge."[11]

Our review of the transcript of the sentencing hearing indicates that the restitution ordered was not supported by competent evidence. The victim did not testify at the sentencing hearing, and there were no documents admitted into evidence, such as receipts or vehicle repair estimates, substantiating the cost of repairing the delivery truck. While we agree with the State that the victim is entitled to have the

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[8]Erickson v. State, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991); see also NRS 176.033(1)(c) ("If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense.").

[9]U.S. v. Norris, 217 F.3d 262, 272 (5th Cir. 2000) (quoting United States v. Campbell, 106 F.3d 64, 70 (5th Cir. 1997)).

[10]See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

[11]Id.

SUPREME COURT OF NEVADA

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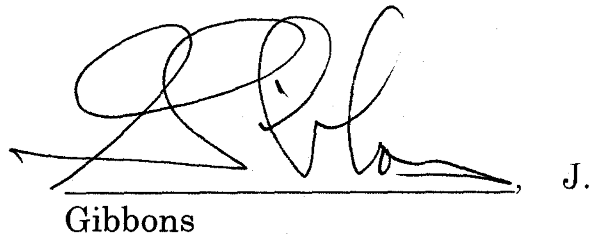
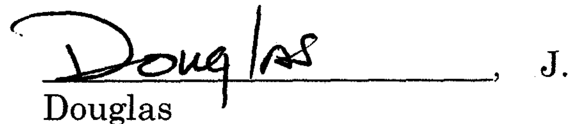
delivery truck repaired to the condition that it was in before it was stolen, where restitution is challenged by the defendant, there should be reliable and accurate evidence substantiating the victim's loss in the record. Accordingly we

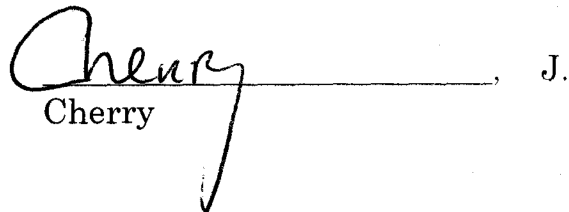
ORDER the judgments of conviction in Docket Nos. 48007 and 48008 AFFIRMED,[12] and we ORDER the judgment of conviction in Docket No. 48009 AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



_______________________, J.
Gibbons



_______________________, J.
Douglas



_______________________, J.
Cherry

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[12]We note that Sullivan did not challenge the restitution ordered in Docket No. 48008.