

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ALBERTO JARA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48030

**FILED**

**JAN 08 2007**

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 trafficking in a controlled substance. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Luis Alberto Jara to serve a prison term of 10-25 years and ordered him to pay a fine of \$5,000.00.

Jara's sole contention is that the district court abused its discretion at sentencing. Jara claims that the district court's determination that he did not render substantial assistance pursuant to NRS 453.3405(2), and therefore was not entitled to a sentence reduction, was based on highly suspect evidence, specifically, the court's alleged "perceived disconnect" between Jara's wife's portrait of him "as a good husband, father and son" and his status as "a typical methamphetamine user." We disagree.

NRS 453.3405(2) provides that the district court may reduce or suspend the sentence of any person convicted of trafficking in a controlled substance "if he finds that the convicted person rendered

substantial assistance in the identification, arrest or conviction of any . . . person involved in trafficking in a controlled substance.” In other words, the decision to grant “a sentence reduction under NRS 453.3405(2) is a discretionary function of the district court.”<sup>1</sup>

Additionally, 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.<sup>2</sup> This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>3</sup> The district court’s discretion, however, is not limitless.<sup>4</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>5</sup> Despite its severity, a sentence within the statutory

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<sup>1</sup>Matos v. State, 110 Nev. 834, 838, 878 P.2d 288, 290 (1994); see also Parrish v. State, 116 Nev. 982, 988-89, 12 P.3d 953, 957 (2000).

<sup>2</sup>Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

<sup>3</sup>Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>4</sup>Parrish, 116 Nev. at 989, 12 P.3d at 957.

<sup>5</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (emphasis added).

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>6</sup>

In the instant case, Jara cannot demonstrate that the district court relied solely on impalpable or highly suspect evidence and he does not allege that the relevant sentencing statute is unconstitutional. In fact, Jara concedes that the sentence imposed by the district court was within the parameters provided by the relevant statute.<sup>7</sup> Moreover, at the sentencing hearing, Special Agent Joseph Dellavolpe of the Drug Enforcement Agency testified that Jara provided no assistance to law enforcement personnel after he was taken into custody. As a result, the district court specifically found that Jara did not provide substantial assistance and was not entitled to a sentence reduction. The district court then followed the identical recommendations of the Division of Parole and Probation and the prosecutor and imposed the minimum term of incarceration possible absent a finding of substantial assistance. Therefore, based on all of the above, we conclude that the district court did not abuse its discretion at sentencing.

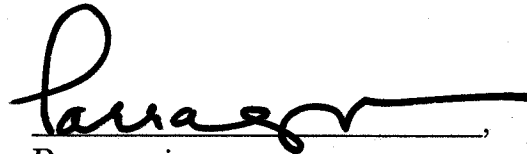
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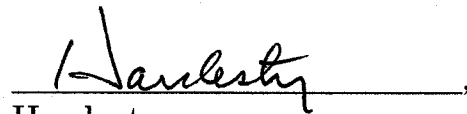
<sup>6</sup>Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

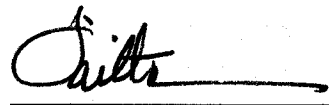
<sup>7</sup>See NRS 453.3385(3) (category A felony punishable by a prison term of 10-25 years or 10 years to life and the imposition of a fine not to exceed \$500,000).

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

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